



BUTTERWORTHS'
YEARLY DIGEST
OF
REPORTED CASES
FOR THE YEAR 1911,
BEING
THE FOURTH YEARLY SUPPLEMENT
OF
BUTTERWORTHS' TEN YEARS'
DIGEST.

"STANDS UNIQUE."—*Law Times*.

1911 Volume Now Ready.

BUTTERWORTHS'
**Twentieth Century
Statutes**

(ANNOTATED).

VOLS. 1-7 ISSUED.

Being the Public General Acts passed in the years
1900-1911 inclusive, excluding Acts in force only in
Scotland, the Channel Islands, and the Isle of Man,
collated, classified and copiously annotated.

Full Prospectus on Application to—

Butterworth & Co., 11 & 12, Bell Yard, Temple Bar, W.C.

Law. J. E.
B9886

[Butterworths' ten years' digest]

BUTTERWORTHS'
YEARLY DIGEST
OF
REPORTED CASES

FOR THE YEAR 1911

BEING

THE FOURTH YEARLY SUPPLEMENT

OF

BUTTERWORTHS' TEN YEARS'
DIGEST

AND CONTAINING THE CASES

DECIDED IN THE SUPREME AND OTHER COURTS,

INCLUDING

*A COPIOUS SELECTION OF REPORTED CASES DECIDED IN
THE IRISH AND SCOTTISH COURTS,*

WITH

LISTS OF CASES DIGESTED, OVERRULED, CONSIDERED, &c.,
AND OF STATUTES, ORDERS, RULES, &c., REFERRED TO.

EDITED BY

HARRY CLOVER,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

311175
2
35
7

LONDON :

BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR.

Law Publishers.

SYDNEY :

BUTTERWORTH & Co. (Australia), Ltd.,
76, Elizabeth Street.

CALCUTTA :

BUTTERWORTH & Co. (India), Ltd.,
8/2, Hastings Street.

1912.

BRADBURY, AGNEW, & CO LD., PRINTERS
LONDON AND TONBRIDGE.

PREFACE.

THIS volume, forming the Fourth Yearly Supplement to BUTTERWORTHS' TEN YEARS' DIGEST, comprises the decisions reported during the year 1911, but with a view to making the Digest as up-to-date as possible the references to the "Law Reports" and "Law Journal Reports" issued in January, 1912, have been added to those cases which were already included as having been reported in other series of reports or in the "Weekly Notes." Other important cases decided towards the end of the year 1911, and not yet fully reported, will be found noted in this volume, the notes being prepared from the daily law report in the *Times*, or from the weekly notes of cases in the various legal journals.

The system of classification in this volume is the same as that adopted in the original work, while the cross references this year have been somewhat amplified and it is hoped that this will further facilitate the use of the volume.

It is desired to acknowledge the permission courteously granted to the Publishers of this Digest by the Council of Law Reporting for Ireland and by the Faculty of Advocates to make use of the headnotes contained in the Irish Reports and the Court of Session Cases respectively. A similar acknowledgment is due as in previous years to the publishers and editors of the "Irish Law Times" and the "Scottish Law Reporter." An acknowledgment to the Incorporated Council of Law Reporting for England and Wales appears on the following page.

H. C.

1, HARE COURT,
TEMPLE,

January 11, 1912.



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

NOTE.

The headnotes of cases in the Law Reports are reprinted therefrom with the permission of the Incorporated Council of Law Reporting for England and Wales.

LIST OF REPORTS

CONTAINING THE CASES COMPRISED IN THIS DIGEST, WITH THE
MODE OF CITATION.

Reports.						Mode of Citation.
Law Reports	...	...	...	...	...	[1911] A. C. [1911] 1 Ch. ; [1911] 2 h. [1911] 1 K. B. ; [1911] 2 K. B. [1911] P. [1911] W. N.
Law Journal Reports	...	...	...	...	...	80 L. J. Ch. 80 L. J. K. B. 80 L. J. P. 80 L. J. P. C.
Law Times Reports	...	...	...	...	...	103 L. T. ; 104 L. T. ; 105 L. T.
Justice of the Peace	...	...	...	...	...	75 J. P.
Times Law Reports...	...	...	...	...	...	27 T. L. R. ; 28 T. L. R.
Solicitors' Journal	...	...	...	...	...	55 Sol. Jo. ; 56 Sol. Jo.
Commercial Cases	...	...	...	...	...	16 Com. Cas.
Maritime Law Cases	...	...	...	...	...	11 Asp. M. C.
Cox's Criminal Law Cases...	...	...	...	...	...	22 Cox, C. C.
Local Government Reports	...	...	...	...	...	9 L. G. R.
Bankruptcy and Company Cases	...	...	...	...	...	17 Manson ; 18 Manson.
Butterworths' Workmen's Compensation Cases *	...	...	...	...	...	4 B. W. C. C.
Patent, Design, Trade Mark and other Cases *...	...	...	...	...	...	28 R. P. C.
Registration Cases	...	...	...	...	...	2 Smith, Reg.
M'Namara's Railway and Canal Cases	...	...	...	...	...	13 Rly. Cas.
Irish Reports *	...	...	...	...	...	[1911] 1 I. R. [1911] 2 I. R.
Irish Law Times *	...	...	...	...	...	45 I. L. T.
<i>Scottish Reports—</i>						
Court of Session Cases *	...	...	...	...	...	[1911] S. C.
Scottish Law Reporter *	...	...	...	...	...	48 Sc. L. R. ; 49 Sc. L. R.
Adam's Justiciary Reports *	...	...	...	...	...	6 Adam.
Law Journal, Notes of Cases	...	...	...	...	...	46 L. J. N. C.
Justice of the Peace, Notes of Cases	...	...	...	...	...	75 J. P. N. C.
Law Times, Notes of Cases	...	...	...	...	...	130 L. T. Jo. ; 131 L. T. Jo. ; 132 L. T. Jo.
The Times, Newspaper	...	...	...	...	...	<i>Times</i> , January 1st, 1911.

* A selection only from these reports is included.

ALPHABETICAL LIST OF CASES DIGESTED.

NAMES OF BOTH PLAINTIFFS AND DEFENDANTS APPEAR ALPHABETICALLY.

*. * *The columns and not the pages are referred to throughout the Table of Cases.*

A.	
Abbey v. Gutters, 321, 322	Allison v. Independent Press Cable Association of Australasia, Ltd., 481
"Abchurch" Steamship Co. v. Stinnes, 578	Amalgamated Pictorials, Ltd., Bowden Bros. v., 104
Abdul Azeez v. Abdul Rahiman Mudliyar, 169, 170	Amalgamated Society of Engineers, Wilson v., 620
Abertillery Urban District Council, Andrews v., 199, 200	Amalgamated Society of Railway Servants (Parliamentary Fund Trusts), <i>In re</i> ; Addison v. Pilcher, 490
Abrahams, <i>In re</i> ; Abrahams v. Bendon, 668, 669	Amalgamated Society of Railway Servants, Osborne v., 620, 621
— v. Campbell, 100	American Surety Co. of New York v. Wrightson, 290, 291
Adair and New River Co., Metropolitan Water Board v., 418	— Thread Co. v. Joyce, 280
Adams, <i>In the Goods of</i> , 211, 212	Amys v. Barton, 387, 390
Adcock's Trustee v. Bridge Rural District Council, 45, 46	Ancaster, R. v., 114
Addie (R.) & Sons, Traynor v., 382	Anderson, <i>In re</i> , 24
Addie (R.) & Sons' Collieries, Ltd., Winters v., 399, 400	— Lanston Monotype Corporation, Ltd. v., 281, 282
Addison, Malling v.; <i>In re</i> Baxter's Trusts, 524	— M'Lauchlan v., 389
— v. Pilcher; <i>In re</i> Amalgamated Society of Railway Servants (Parliamentary Fund Trusts), 490	— & Sons, Devons v., 366, 367
Admiralty (Lords Commissioners), Horn v., 399	Andrew Handyside & Co., Ltd., <i>In re</i> , 66, 67
Ailsa Shipbuilding Co., Ltd., Cadenhead v., 396	Andrews v. Abertillery Urban District Council, 199, 200
Ainsworth v. Cheshire County Council (Clerk), 193	— Stansfield & Co. v., 307, 308
Aktiebolaget Robertsfors and La Société Anonyme des Papeteries de l'Aa, <i>In re</i> , 481, 482	Angehrn and Piel, Federal Supply and Cold Storage Co. of South Africa, Ltd. v., 403
Aktiesselskabet Dampskib "Hercules" v. Grand Trunk and Pacific Ry. Co., 480, 481	Angel v. Jay, 108, 423, 424
Alberta (Province) Minister of Public Works, Canadian Pacific Ry. Co. v., 163, 164	Anglo-American Oil Co., Ltd., Board of Trade v., 566
Albutt, R. v., 23	— -American Oil Co., Ltd., Poulton & Son v., 537, 538
Alchorne, <i>In re</i> ; Eade v. Bournier, 655	— -American Telegraph Co., Ltd., <i>In re</i> , 76
Alexander, Hatzfeldt v., 542	— -American Telegraph Co., Reid Newfoundland Co. v., 171
Allan Line Steamship Co., Ltd., Stephen & Sons, Ltd. v., 583, 593	Annibal, Shorthouse v.; <i>In re</i> Boam, 665, 666
— Steamship Co., Crawford v., 575	Anson, Denaby and Cadeby Main Collieries, Ltd. v., 594
Allardice v. Allardice, 171, 172	"Ariadne," The, 581
Allatini Bros. and Others, Red "R" Steamship Co. v., 569	Armorduct Manufacturing Co., Ltd. v. General Incandescent Co., Ltd., 205, 206
Allen, R. v.; <i>Ex parte</i> Griffiths, 194	Armstrong v. Dixon, 435
— R. v.; <i>Ex parte</i> Hardman, 352, 353,	Arnold, Barker v., 115
	— v. Ind, Coope & Co., Ltd., <i>In re</i> The Co., 66, 433

- Arnold *v.* Morgan, 345, 510, 511
 — *Townsend v.*, 306
 Arnold *v.* Fife Coal Co., Ltd., 374
 Ash (Clanjust), Son & Co. *v.* Invieta Manufacturing Co., Ltd., 623
 Atlantic Development, Ltd., *In re*, 62
 Ashley *v.* Blaker, 469
 Ayrton, Fifeo Spar Mines, Ltd. *v.* Jackson, 151
 Astell *v.* Barrett, 195, 196
 Astley, Evans (R.) & Co. *v.*, 377
 Atkinson, *In re*; Atkinson *v.* Atkinson, 653
 — and Horsell's Contract, *In re*, 543, 544
 Attborough, Solomon *v.*, 214, 461, 462
 Att.-Gen. *v.* Boden, 154, 155
 — Bowles *v.*, 280
 — *v.* Bradford Corporation, 450
 — Burghes *v.*, 145, 146, 484
 — *v.* Caledonian Ry. Co., 530, 531
 — *v.* Dorin, 259
 — Dyson *v.*, 144, 145, 146, 466, 467, 484
 — *v.* East Barnet Valley Urban District Council, 332
 — *v.* Exeter Corporation, 530
 — *v.* Leicester Corporation, 199
 — *v.* Lewes Corporation, 561, 643
 — (Glamorgan County Council) *v.* Price, 52, 53
 — *v.* Reynolds, 58
 — *v.* Rowley Bros., 640, 641
 — *v.* Seccombe, 152, 153
 — *v.* West Ham Corporation, 330, 331
 — for Canada *v.* Standard Trust Company of New York, 70
 — for Dominion of Canada *v.* Fedorenko, 166
 — for Ireland *v.* McCarthy, 644, 645
 — for the Province of Quebec *v.* Att.-Gen. for the Province of Ontario, 168
 — of Quebec, Wyatt *v.*, 169
 Auchenlea Coal Co., Ltd., Kelly *v.*, 361, 362
 Austin *v.* Dunshaughlin Union (Guardians), 228, 229
 Aykroyd, Stead *v.*, 228, 229, 240
- B.
- B. *v.* B., 271
 Babcock & Wilcox, Ltd. *v.* Young, 366
 Backworth Collieries (Owners), Huntley Brothers *v.*, 176
 Baddeley, Gray *v.*; *In re* Seabrook, 474
 Bagley, *In re*, 25, 26, 28, 36, 595, 596
 — *v.* Maple & Co., Ltd., 267, 268
 Bain *v.* Compstall Co-operative Society, 339
 Baird (William) & Co., Ltd., Kerr *v.*, 381
 Baker, Braddell *v.*, 528
 — *v.* Ingall, 620
 — Williams *v.*, 231
 Baldwin, Webb *v.*, 251
- Ball, Director of Public Prosecutions *v.*, 115
 — Director of Public Prosecutions *v.* (No. 1), 141
 — Director of Public Prosecutions *v.* (No. 2), 143
 — *v.* Hunt (W.) & Sons, Ltd., 358, 359
 — *R. v.*, 115, 141, 143
 — Baker & Co., Mead *v.*, 61
 Banbridge Weaving Co., Shannon *v.*, 369
 Banfield *v.* Picard, 543
 Bank of Ireland *v.* Slattery, 434, 435
 — of Montreal *v.* Stuart, 266
 — of Montreal and Royal Trust Co., McFarland *v.*, 166
 — of Scotland *v.* Morrison, 247
 Banks *v.* Hartland, *In re* Hartland, 152, 606
 — *R. v.*, 119
 Banyard, Ellis *v.*, 13, 444
 Barker *v.* Arnold, 115
 — *v.* Herbert, 448, 449
 Barlow *v.* Yorke; *In re* Yorke, 558
 Barnabas *v.* Bersham Colliery Co., 358
 Barnes *v.* Lawson, 497
 — *v.* Nunnery Colliery Co., Ltd., 386
 Barnett, Grand Trunk Ry. Co. of Canada *v.*, 444
 Barrett, Astell *v.*, 195, 196
 Barry, Minturn *v.*, 411
 Bartley *v.* Thomas; *In re* Thomas, 214, 215, 491
 Barton, Amys *v.*, 387, 390
 Bass *v.* Hendon Urban District Council, 400
 Bateman, *In re*; Wallace *v.* Mawdsley, 652
 Bates, R. *v.*, 120, 216
 Bath *v.* Standard Land Co., Ltd., 68, 69
 Batt *v.* Metropolitan Water Board, 417, 418, 441
 Battersea Corporation, Woodward *v.*, 286
 Baxter's Trusts, *In re*; Malling *v.* Addison, 524
 Bayley, Coaks *v.*; *In re* Coaks, 557
 Beaconsfield Urban District Council, Robinson *v.*, 438, 439
 Beale, Neale *v.*; *In re* Dering, 654, 655
 Beaney, Curtis *v.*, 211
 Beaver and Armstrong, R. *v.*, 611, 612
 Becher, United Mining and Finance Corporation, Ltd. *v.*, 604
 Becker *v.* Earl's Court, Ltd., 448
 Bedford (Duke) *v.* London County Council, 528, 529
 Beebe, Fauntleroy *v.*, 201, 214
 Beech *v.* Bradford Corporation, 392
 Beeley, May *v.*, 350, 351
 Beesley, *Ex parte*; R. *v.* Rowlands, 335, 336
 Behrend's Trust, *In re*; Surman *v.* Biddell, 35
 Beldam's Patent, *In re*; Turner *v.* Beldam, 458
 Belfast Corporation, Pickering *v.*, 445, 446
 — Harbour Commissioners, M'Cartan *v.*, 400, 401
 Bell *v.* Butterly, 215, 216
 Bellamy, Woodbridge & Sons *v.*, 600

- Bendon, Abrahams *v.*; *In re* Abrahams, 668, 669
 Benn, Griffiths *v.*, 325, 493
 Bennett, Cope *v.*, 208
 — Cope *v.*; Harris Third Party (No. 1), 41
 — Cope *v.*; Harris Third Party, 208
 — *v.* Houldsworth, 654
 — Liverpool, London and Globe Insurance Co. *v.*, 278
 — Brothers, Ltd., East *v.*, 75
 Bennetts, La Société Anonyme de Remorquage à Hélice *v.*, 150, 592
 Bermondsey Bioscope Co., London County Council *v.*, 616
 Bersham Colliery Co., Barnabas *v.*, 358
 "Bessie" (Owner), Lee *v.*, 370
 Best, R. *v.*, 116, 117
 Betts *v.* Stevens, 609
 Bevan *v.* Energlyn Colliery Co., 364
 — *v.* Shears, 190
 Bewick, *In re*; Ryle *v.* Ryle, 666, 667
 Bexhill Corporation, R. *v.*; *Ex parte* Cornell, 339
 Bhagabati Barmanya *v.* Kali Charan Singh, 173
 Bibbey, Metropolitan Water Board *v.*, 647
 Bibby and Baron, Ltd. *v.* Duerden, 458
 — and Baron, Ltd. *v.* Strachan and Henshaw, Ltd., 458
 Biddell, Surman *v.*; *In re* Behrend's Trust, 35
 — Brothers *v.* Clemens (E.) Horst Co., 538, 572
 Biddulph *v.* Peel; *In re* Peel's Settlement, 474, 475
 "Bien," The, 224
 Billericay Rural Council *v.* Poplar Union and Keeling, 255
 Bilton, London and Westminster Loan and Discount Co., Ltd. *v.*, 201
 Bingley Urban District Council, Dawson *v.*, 441, 442
 Birkbeck Permanent Benefit Building Society, *In re*, 48
 Birt, Errington *v.*, 316, 317
 Birtles, R. *v.*, 131
 Biscoe, *In re*; *Ex parte* Official Receiver, 31, 32
 Bishop's Stortford Union Assessment Committee and Overseers of Parish of Thorley, Great Eastern Ry. Co. *v.*, 515
 Black, Browne *v.*, 597
 — *v.* Fife Coal Co., 400, 419, 420
 Blackledge, McNally *v.*, 108
 Blackwell (R. W.) & Co., Ltd. *v.* Derby Corporation, 17
 Bladon, *In re*; Dando *v.* Porter, 304
 Blaker, Ashley *v.*, 469
 Blamped, "Segura" (Owners) *v.*, 391
 Blanchards (London), Ltd., Hodson *v.*, 68
 Blue Anchor Line, Ltd., Skales *v.*, 398
 Boam, *In re*; Shorthouse *v.* Annibal, 665, 666
 Board of Education *v.* Rice, 188, 189
 Board of Trade *v.* Anglo-American Oil Co., Ltd., 566
 — of Trade *v.* Employers' Liability Assurance Corporation, Ltd., 36
 Boden, Att.-Gen. *v.*, 154, 155
 Boehm *v.* Goodall, 454, 521
 Bolton *v.* Everett, 614
 Bond, *In re*; *Ex parte* Capital and Counties Bank, Ltd., 27
 Borland *v.* Watson, Gow & Co., Ltd., 360
 Bottomley and Others, *Ex parte*, 350
 Boulcott's Settlement, *In re*; Wood *v.* Boulcott, 550, 551
 Boulter, *In re*; *Ex parte* Manchester and Liverpool District Banking Co., 27
 Bournemouth Corporation, Poole Corporation *v.*, 282
 Bournier, Eade *v.*; *In re* Alchorne, 655
 Bowden Brothers *v.* Amalgamated Pictorials, Ltd., 104
 Bowen, *Ex parte*, 122
 — Cox *v.*, 300
 Bower *v.* Caistor Rural District Council, 503, 504
 — *v.* Chapel-en-le-Frith Rural District Council, 43, 44
 Bowles *v.* Att.-Gen., 280
 — Rudd *v.*, 314
 Boyd and Forrest *v.* Glasgow and South Western Ry. Co., 422, 423
 Boyle *v.* Ferguson (J. B.), Ltd., 401, 402
 Bracey *v.* Sherwin; *In re* Charleton, 664
 Braddell *v.* Baker, 528
 Bradford Corporation, Att.-Gen. *v.*, 450
 — Corporation, Beech *v.*, 392
 — R. *v.*, 139
 — & Co., Howell *v.*, 363
 Bradley *v.* Essex and Suffolk Accident Indemnity Society, Ltd., 288, 289
 — and Cohn, Ltd. *v.* Ramsey & Co., 538
 — Staffordshire and Worcestershire Canal Navigation *v.*, 223
 Bradshaw, Fortescue (L.), Ltd. *v.*, 428
 Bragg, Carlisle and Cumberland Banking Co. *v.*, 202, 203
 Brandy *v.* "Raphael" (Owners), 365
 Braintree Union (Guardians) *v.* Rochford Union (Guardians), 472, 473
 Brazilian Rubber Plantations and Estates, Ltd., *In re*, 71, 492, 493
 Breslin *v.* Dublin United Tramway Co., 446
 Brice *v.* Northern Assurance Co., 278
 — *v.* Ocean Accident and Guarantee Corporation, Ltd., 278
 Bridge Rural District Council, Adcock's Trustee *v.*, 45, 46
 Briggs *v.* Mitchell, 371
 — Tew *v.*, *In re* Charlesworth, 154
 Brigstocke, Dominion of Canada General Trading and Investment Syndicate, Ltd. *v.*, 83

- Branson v. Davies, 7
 Bristol Guardians v. Bristol Waterworks Co., 648
 Bristol v. Ryle v. *In re* Sheffield (Earl), 654
 British Amsterdam Maritime Agency, Ltd.,
 London Joint Stock Bank, Ltd. v., 573
 — and Mexican Shipping Co., Ltd. v.
 Lockett Brothers & Co., Ltd., 577, 578
 — Association of Glass Bottle Manufacturers,
 Ltd. v. Nettlefold, 81, 618
 — Guiana Bank v. Official Receiver, 22
 — Legal and United Provident Assurance
 Co., Ltd. v. Sheffield, 467
 — Orphan Asylum, Seal v., 218
 — Radio-Telegraph and Telephone Co.,
 Ltd., Marconi and Marconi's Wireless
 Telegraph Co., Ltd. v., 456
 — South Africa Co. v. De Beers Consolidated
 Mines, Ltd., 92
 — South Africa Co., De Beers Consolidated
 Mines, Ltd. v., 63, 436, 618, 619
 — Westinghouse Electric and Manufacturing
 Co., Ltd. v. Electrical Co., 148, 149
 — Westinghouse Electric and Manufacturing
 Co. v. Underground Electric Ry. Co. of
 London, 459
 Brixey, Ramoneur Co. v., 619
 Brixton Prison (Governor). R. v. : *Ex parte*
 Savarkar, 217
 Prison (Governor) R. v. : *Ex parte*
 Thompson, 216, 217
 Broad, *In re* ; *Ex parte* Official Receiver, 213
 Broadwood, *In re* ; Lyall v. Broadwood, 212
 Brockelbank v. Brockelbank and Borlase, 270
 Broken Hill South Extended, Stamp Duties
 Commissioner v., 160, 161
 Brookes v. Cohen ; *In re* Cohen, 476
 Brooks, Metropolitan Water Board v., 416, 417
 Bros, R. v. ; *Ex parte* Hardy, 348
 Brougham, *Ex parte* ; *In re* Darby, 33
 Brown, *Ex parte* ; R. v. Garrett-Pegge, 349
 — v. Burt, 278
 — v. Crossley, 610, 611
 — v. Turner, Brightman & Co., 567, 568
 Browne v. Black, 597
 — v. Flower, 319, 320
 — v. Kidman, 360
 Browning v. Browning, 271
 Brownlee & Co., Young v., 72
 Bruce, R. v., 139
 Bruen's Estate, *In re*, 556
 Brynndu Colliery Co., Ltd., Harding v., 380,
 397
 Buchanan, Eaton v., 546, 547
 Buckland, Pallin v., 473
 Buckley, Hales v., 306, 307
 Bull v. Lord, 230
 Bullock v. Bullock, 272
 Bundy, R. v., 116
 Burchell v. Gowrie and Blockhouse Collieries,
 5, 7
 Burden v. Rigler, 255, 256
 Burdett v. Horne, 266, 267
 — Stirling v., 246
 Burgess & Co., Ltd. v. Jewell, 395
 Burghes v. Att.-Gen., 145, 146, 484
 Burn, Stone v. 625, 626
 Burnell, Hall v., 542
 — Jones v., 605
 Burniston v. White ; *In re* Hammond, 657
 Burrage, Carshalton Urban District Council v.,
 252
 Burrard Power Co., Ltd. v. R., 163
 Burrell v. Holloway Brothers (London), Ltd., 368
 Burroughes & Watts, Ltd., Groves v., 377, 378
 Burrows v. Thomas, 517, 535
 Burt, Brown v., 278
 Butnick, *Ex parte* ; R. v. Halkett, 617
 Butterly, Bell v., 215, 216
 Byrnes, Stamp Duties (Commissioner) v., 159, 160
 Bythway, *In re* ; Gough v. Dames, 212

 C.
 C. (A Solicitor), *In re* ; *Ex parte* Law Society,
 603
 C. v. C. (otherwise H.), 271
 C. v. C. & M., 274
 Cadenhead v. Ailsa Shipbuilding Co., Ltd., 396
 Cadogan's (Earl) Settlements, *In re* ; Richmond
 v. Lambton, 475, 476
 Caistor Rural District Council, Bower v., 503, 504
 Caldbeck v. Caldbeck, 658
 Caledonian Ry. Co., Att.-Gen. v., 530, 531
 — Ry. Co., Glasgow and South-Western
 Ry. Co., and North British Ry. Co. v.
 Lanarkshire Coalmasters Association.
 508
 — Ry. Co. v. Glenboig Union Fire-clay Co.,
 421
 — Ry. Co., M'Laren v., 385, 386
 — Ry. Co. v. Symington, 421
 — Ry. Co., Symington v., 421
 — Ry. Co. and Others v. Coltness Iron Co.
 and Others, 508
 — Ry. Co. and Others, Watson (John), Ltd.
 and Others v., 508
 Calico Printers' Association, Ltd. v. Higham, 391
 Calne Union v. Wilts County Council, 469, 470
 "Calyx," The, 590
 Campbell, *In re* ; *Ex parte* Seal, 425
 — Abrahams v., 100
 — v. Paddington Borough Council, 449
 — R. v., 122
 Campbell's Trustees v. Sweeney, 641
 Canadian Northern Ry. Co. v. Robinson, 164
 — Pacific Ry. Co., Alberta (Province),
 Minister of Public Works v., 163, 164

- Canadian Pacific Ry. Co. *v.* City of Toronto Corporation and Grand Trunk Ry. Co. of Canada, 111, 164
 — Pacific Ry. Co., R. *v.*, 163, 164
 Cannon Brewery Co., London County Council *v.*, 410
 Capital and Counties Bank, *Ex parte; In re* Bond, 27
 — and Counties Bank, McCarthy *v.*, 25
 Cardiff Corporation *v.* Hall, 394
 — Guardians, Glamorgan County Asylum (Committee of Visitors) *v.*, 469
 Carew's Trusts, *In re; Gellibrand v.* Carew, 551
 Carlin *v.* Stephen (Alexander) & Sons, Ltd., 396, 397
 Carlisle (Earl) (Executrix of) *v.* Northumberland County Council, 89, 90
 Carlisle and Cumberland Banking Co. *v.* Bragg, 202, 203
 Carlton Illustrators *v.* Coleman & Co., Ltd., 104
 Carolan *v.* Harrington, 373, 374
 Carr, Griessemann *v.*; *In re* Mackay, 633, 634
 Carroll, Erie County Natural Gas and Fuel Co. *v.*, 149
 Carruthers *v.* Peake, 560
 Carshalton Urban District Council *v.* Burrage, 252
 Cartwright *v.* Hoogstoel, 605, 606
 "Carvino" Trade Mark, *In re; Coleman & Co., Ltd. v.* Stephen Smith & Co., Ltd., 623, 626
 Cassidy, M'Gillicuddy *v.*, 483
 Cathcart *v.* Chalmers, 9
 Caton, *In re; Vincent v.* Vatcher, 497
 Cavan and Lind, Dunnigan *v.*, 361
 Central London Ry. *v.* City of London Land Tax Commissioners, 311, 312
 Challans, Potter *v.*, 12
 Chalmers, Cathcart *v.*, 9
 Chapel-en-le-Frith Rural District Council, Bower *v.*, 43, 44
 Chaplin *v.* Hicks, 151
 Chapman, R. *v.*, 119
 Chappell & Co. *v.* Harrison, 179
 Charlesworth, *In re; Tew v.* Briggs, 154
 Charleton, *In re; Bracey v.* Sherwin, 664
 Cheltenham Corporation, Fry *v.*, 372, 500
 Chemische Fabrik Von Heyden Aktiengesellschaft, Saccharin Corporation *v.*, 479, 480
 Cheshire County Council (Clerk), Ainsworth *v.*, 193
 Chester Rural District Council, Freeman (G.) & Sons *v.*, 17
 Chesterfield (Earl), Harris *v.*, 222, 223
 Chesterfield's (Lord) Settled Estates, *In re*, 557, 558
 Chesterton *v.* Gardom, 198
 Chicoutimi Pulp Co., Wertheim *v.*, 150
 Chiesman & Co. *v.* "Modena" (Owners), "Modena," The, 571, 572
 Chitson, R. *v.*, 118
 Chorley Union Assessment Committee and Withnell Overseers, Liverpool Corporation *v.*, 518
 Christineville Rubber Estates, Ltd., *In re*, 77
 Chuter *v.* Freeth and Pocock Ltd., 229
 Cia Anonima Maritime Union, Dunford & Co., Ltd. *v.*, 569, 570
 City and Suburban Dairies, Ltd., M'Adam *v.*, 324
 City of Birmingham Tramways Co., Ltd. *v.* Law, 627
 City of Birmingham Tramways Co., Neale *v.*, 80, 81
 City of Glasgow Friendly Society, Wilkinson *v.*, 236
 City of London Brewery Co., Knight *v.*, 303
 City of London Land Tax Commissioners, Central London Ry. *v.*, 311, 312
 City of Perth Corporation, Perth Gas Co. *v.*, 81
 City of Toronto Corporation and Grand Trunk Ry. Co. of Canada, Canadian Pacific Ry. Co. *v.*, 111, 164
 City of Vancouver *v.* Vancouver Lumber Co., 167
 Clare *v.* Dobson, 318
 Clark *v.* Edinburgh Assessor, 517
 — London County Council *v.*, 410, 411
 — *v.* North British Ry. Co., 445
 — *v.* Sun Insurance Office, 282
 — (John T.) & Co., Ltd., *In re*, 74, 80
 Clarke *v.* Clarke and Lindsay, 274
 — *v.* Dighton; *In re* Clarke, 666
 Clarke's Settlement Fund, *In re*, 599
 Clarkson *v.* Robinson; *In re* Robinson (No. 1), 426, 427
 — *v.* Robinson; *In re* Robinson (No. 2), 427
 Clayton *v.* Le Roy, 537, 630
 Clemens (E.) Horst Co., Biddell Brothers *v.*, 538, 572
 Clements *v.* Conroy, 541
 Clifford, *In re; Mallam v.* McFie, 53, 54, 660, 661
 Clift, Strutt *v.*, 525, 526
 Cloutte *v.* Storey, 202, 476, 477, 636, 637
 Clunies-Ross, Stubbings *v.*, 210
 Clyde Navigation Trustees, Ellerman Lines, Ltd. *v.*, 589
 — Navigation Trustees, Glasgow and Newport News Steamship Co., Ltd. *v.*, 589
 Coaker *v.* Willcocks, 13, 14, 57
 Coaks, *In re; Coaks v.* Bayley, 557
 Coasters, Ltd., *In re*, 84, 85
 Coburn, Milch *v.*, 313, 315, 424
 Cock, Smith *v.*, 632
 Cockle, Deighton *v.*, 483
 Cockrell, *In re; Pinkey v.* Cockrell, 597, 598
 Cockrell's Estate, *In re*, 597, 598
 Cohen, *In re; Brookes v.* Cohen, 476

- Colchester Borough Council *v.* Gepp, King Third Party, 255
- Cole *v.* Evans, Son, Leschner & Webb, Ltd., 386
- Coleman & Co., Carlton Illustrators *v.*, 104
— & Co., Ltd. *v.* Smith (Stephen) & Co., Ltd.; *In re* "Carvino" Trade Mark, 623, 626
- Coleridge, West Yorkshire Darracq Agency, Ltd. *v.*, 97
- Collett, Culver *v.*; *In re* Spurge, 304
- Colley's Patents, Ltd. *v.* Metropolitan Water Board, 416
- Collis's Estate, *In re*, 560
- Collman *v.* Stokes, 526
- Coltness Iron Co. and Others, Caledonian Ry. Co. and Others *v.*, 508
- Colville *v.* Martin; *In re* Colville, 655
- "Comet" (Lightship) Owners *v.* "W. H. No. 1" (Owners), The "W. H. No. 1" and the "Knight Errant," 583, 584
- Commercial Mills Spinning Co., Ltd., Crabtree *v.*, 219
- Compania Sansinena de Carnes Congeladas *v.* Houlder Brothers & Co., Ltd., 485
- Compstall Co-operative Society, Bain *v.*, 339
- Connell *v.* Oddy; *In re* Oddy, 635, 636, 637
- Connolly Brothers, Ltd., *In re*; *Wood v.* Connolly Brothers, Ltd., 112, 522
- Conolly, Wilson *v.*, 238, 239
— and Costello, R. *v.*, 132
- Conroy, Clements *v.*, 541
- Conway *v.* Pumpherson Oil Co., Ltd., 380, 381
- Coode and Hasell, Weymouth Waterworks Co. *v.*, 646, 647
- Cook *v.* Hobbs, 526
— *v.* Trevenner, 237
- Cooke *v.* London County Council, 90
— R. *v.*; *Ex parte* Atherton, 305, 306
— *v.* Rickman, 203
- Coomber, *In re*; Coomber *v.* Coomber, 245
- Cooper, *In re*, 27
— R. *v.*, 138
- Cooper's Estate, *In re*, 282, 283
- Cope *v.* Bennett, 208
— *v.* Bennett, Harris Third Party (No. 1), 41
— *v.* Bennett, Harris Third Party, 208
— *v.* Sharpe, 238, 629
- Copestake *v.* West Sussex County Council, 252, 253
- Copland, Edmondson *v.*, 434
- Corbin *v.* Stewart, 405
- Cork County Council, R. (Jackson) *v.*, 147
— (County) Justices, R. (Kennedy) *v.*, 348
— R. (O'Leary) *v.*, 344
- Corke *v.* Higgs, 187
— *v.* Rainger, 187
- Cornell, *Ex parte*; R. *v.* Bexhill Corporation, 339
- "Corsican" (Owners), Karemaker *v.*, 386, 387
- Cory & Sons, Ltd. *v.* France, Fenwick & Co., Ltd., 371, 372
— Brothers & Co., Ltd. *v.* Hughes, 394, 395
- Cosford Union and Hitcham Parish Council *v.* Poor Law and Local Government Officers' Mutual Guarantee Association Ltd., 290, 471
- Costello and Bishop, R. *v.*, 132
- Couchman, Warner *v.*, 386
- Cowper, *Ex parte*; R. *v.* Tynemouth Corporation, 259
- Cox *v.* Bowen, 300
— Mitcham Common (Conservators) *v.*, 57, 58
- Crabtree *v.* Commercial Mills Spinning Co., Ltd., 219
- Craig, Doyle *v.*, 194
— & Co., Hyndman *v.*, 379
- "Craighall," The, 497, 587, 588
- Crane, Foundling Hospital (Governors and Guardians) *v.*, 156, 157, 651
— and Others, R. *v.*, 131
- Crawford, *Ex parte*; R. *v.* Sunderland Corporation, 336
— *v.* Allan Steamship Co., 575
— (Earl) *v.* Paton, 105
- Crighton and Law Car and General Insurance Corporation, Ltd., *In re an Arbitration between*, 16
- Crippen, *In the Estate of*, 203, 204, 209, 210
— R. *v.*, 115, 116, 121
- Crittall Manufacturing Co. *v.* London County Council and March, 44, 45
- Croft, Shepherd *v.*, 543, 561
- Crofton, Huddleston *v.*; *In re* Horsfall, 156, 475
- Crompton, Shaw *v.*, 327
- Cromwell *v.* Renton, 610
- Crooks, Evanson *v.*, 292
- Crookston Brothers *v.* Inland Revenue, 279
- Cropley, *In re*, 28
- Crosse, Webbe *v.*, 436, 437
- Crossley, Brown *v.*, 610, 611
- Crouch *v.* Crouch, 269
- Crow, Holloway *v.*, 189, 190
- Croyden, *In re*; Hincks *v.* Roberts, 329
- Crozier, Rea *v.*; *In re* Salter, 54
- Crum Ewing, Pitman *v.*, 546
- Crystal Palace Co., *In re*; Fox *v.* The Co., 81
- Culliford, R. *v.*, 125
- Culver *v.* Collett; *In re* Spurge, 304
- Cumming, Revie *v.*, 382, 383
- Cummings *v.* Stewart, 457
- Cundiff *v.* Fitzsimmons, 432, 523, 524
- "Curran," The, 580
- Curtis *v.* Beaney, 211
- Curzon, Dann *v.*, 99, 110

D.

- D. v. D., 273
 — (a Solicitor), *In re*; *Ex parte* Law Society, 603
 Da Costa, Genforsikrings Aktieselskabet (Skandinavia Reinsurance Co. of Copenhagen) v., 531, 532
 Dairy Supply Co., Ltd. v. Houghton, 229
 Dale v. Powell, 452, 453
 — and Hood; Powell v., 452, 453
 Daly, R. v.; *Ex parte* Newson, 180, 181, 347, 348
 Dames, Gough v.; *In re* Bythway, 212
 Damiens v. "Modern Society," Ltd., 489
 Dando v. Porter; *In re* Bladen, 304
 Daniell, Hops v.; *In re* Greenberry, 660
 Daniels, Kidner v., 611
 Dann v. Curzon, 99, 110
 Darby, *In re*; *Ex parte* Brougham, 33
 Dartford Union Assessment Committee, West Kent Main Sewerage Board v., 518, 519
 Davidson, R. v., 140
 Davies, Brinson v., 7
 — v. Ebbw Vale Urban District Council, 191, 192
 — George v., 403
 — Gillespie, 387
 — R. v., 336
 — R. v.; *Ex parte* Peake, 336
 — Benachi & Co., Montague v., 562, 563
 Davies-Evans v. Ladoga, Ltd. (The "Kingsland"), 577
 Davis, *Ex parte*; R. v. Dickinson, 351, 352
 — Logan (Thomas), Ltd. v., 72
 — v. Rhayader Granite Quarries, Ltd., 489
 Davison, Whitehorn Bros. v., 422
 "Dawlish," The, 574, 575
 Dawson v. Bingley Urban District Council, 441, 442
 — (Mark) & Son, Ltd., Taylor v., 220
 Deacon v. Evans, 566, 567
 Deane (Edward) and Beal, Ltd., Royal Warrant Holders' Association, v. 626
 Deards v. Edinburgh (Assessor), 517
 De Beers Consolidated Mines, Ltd. v. British South Africa Co., 63, 436, 618, 619
 — Consolidated Mines, Ltd., British South Africa Co. v., 92
 de Brimont v. Harvey; *In re* Sheppard, 632, 633
 Debtor, A, *In re*, 31, 175, 176
 — A, *In re*; *Ex parte* Kitchen, Aylard and Craddock, 26
 — A, *In re*; *Ex parte* Petitioning Creditors, 31, 175, 176
 — A, *In re*; *Ex parte* Taylor & Co., Ltd., 31, 175, 176
 — A (No. 7 of 1910), *In re*, 31, 175, 176
 — A (No. 20 of 1910), *In re*, 30
 — A (No. 68 of 1911), *In re*, 27
 — A (No. 305 of 1911), *In re*, 26
 Y.D.
 Debtor, A (No. 1838 of 1911), *In re*, 26
 Decies, Willoughby v.; *In re* Willoughby, 661, 662
 Deddington, Steamship Co. v. Inland Revenue Commissioners, 532, 533
 Dee Estates, Ltd., *In re*; Wright v. Dee Estates, Ltd., 601, 602
 Deighton v. Cockle, 483
 De Jager v. Foster, 162
 De la Rue (Thomas) & Co., Ltd., *In re*, 79
 De la Warr's (Earl) Settled Estates, *In re*, 549, 550
 Denaby and Cadeby Main Collieries, Ltd. v. Anson, 594
 Denholm & Co., Murray v., 360, 361
 Denison-Pender v. Evans; *In re* Whitaker, 214
 Dennis (W.) & Sons, Ltd. v. Tunnard Brothers, 403, 404
 De Pless Pol, De Soysa v., 170, 171, 321
 Derby Corporation, Blackwell (R. W.) & Co., Ltd. v., 17
 Derby's (Lord) Contract, *In re*, Ferguson v. Derby, 8, 9, 540, 541
 Derham v. Strickland, 334
 Dering, *In re*; Neale v. Beale, 654, 655
 De Saram, Samaradiwakara v., 170
 De Soysa v. De Pless Pol, 170, 171, 321
 Despard v. Wilcox, 129, 130
 Deveraux, *In re*; Toovey v. Public Trustee, 638
 Devons v. Anderson & Sons, 366, 367
 "Devonshire," The, 581, 586
 Deyes v. Wood, 79
 Dick's Trustees v. Dick, 657, 658
 Dickens v. National Telephone Co., 615, 616
 Dickinson, R. v.; *Ex parte* Davis, 351, 352
 Didcot, Munro v., 162, 163
 Dighton, Clarke v.; *In re* Clarke, 666
 Dimes, R. v., 130
 Director of Public Prosecutions v. Ball, 115
 — of Public Prosecutions v. Ball (No. 1), 141
 — of Public Prosecutions v. Ball (No. 2), 143
 — of Public Prosecutions, Whiteman v., 427, 428
 — of Public Prosecutions v. Witkowski, 428, 429
 Dixon, Armstrong v., 435
 — (William), Ltd., Morgan v., 374, 375
 — Benshaw v., 205
 Dobie v. Edwards, 653
 — v. Edwards; *In the goods of* Hammer, 653
 Dobson, Clare v., 318
 — Ritson v., 233, 234
 Dodd v. Pearson, 230
 Dolan, O'Driscoll v., 227
 Dolphin, Nickson v., 186
 Dominion of Canada v. Province of Ontario, 168
 — of Canada General Trading and Investment Syndicate, Ltd. v. Brigstocke, 83

Dunnehy v. McIntyre, 308, 309
 Dunkin v. Pearson, 109
 Dunlop v. Dunlop's (Earl) Estate. *In re*, 465
 Dunlop v. R. (Sisk) v., 336
 Dooley v. Dooley, 270, 271
 Dopson, King v., 95, 96
 Doon, Att. Gen. v., 259
 Doonan, Long & Co. Gilmour v., 383
 Douglas v. Sanderson, 197
 Dowgate Steamship Co., Ltd., Thorman v., 576
 Doyle v. Craig, 191
 "Drappner" (Owners) v. "Drappner" Cargo,
 "The Drappner," 570, 571
 "Drumlanrig" (Owners of Steamship),
 "Tongariro" (Owners of Cargo of
 Steamship) v.: "The "Drumlanrig,"
 586
 Drummond, Willoughby v.; *In re* Gresley's
 Settlement, 662, 663
 Dublin United Tramways Co., Breslin v., 446
 — United Tramways Co., Ltd., Hughes v., 488,
 489
 "Duchess" (Owners), Fletcher v., 376
 — (Owners), Hewitt v., 376
 Du Cros's (W. & G.) Application, *In re*, 622
 Duder, Reliance Marine Insurance Co. v., 298
 Duerden, Bibby & Baron, Ltd. v., 458
 Dumergue, Knill v., 172, 173
 Dunford & Co., Ltd. v. Cia Anonima Maritime
 Union, 569, 570
 Dunkerley Brothers, Lees v., 371, 372, 446
 Dunn. *In re*; Simmons v. Liberal Opinion,
 Ltd., 601
 Dunnigan v. Cavan and Lind, 361
 Dunning v. Dunning, 275
 — Provincial Motor Cab Co. v., 352, 612
 — v. Sweetman, 240, 241
 — v. Trainer, 346
 Dunshaughlin Union (Guardians), Austin v., 228,
 229
 "Dupleix," The, 588
 Durham County Council, Gillow v., 189
 Durrant, Sharpe v., 183, 184
 Dutton, *Ex parte*; R. v. Walton, 191
 — Russon v. (No. 1), 308, 333
 — Russon v. (No. 2), 308, 333
 Dyer, Wake v., 354, 355
 Dyson v. Att.-Gen., 144, 466, 467, 484

E.

Eade v. Bourner; *In re* Alchorne, 655
 Earl's Court, Ltd., Becker v., 448
 — Court, Ltd., Metropolitan District Ry. Co.,
 Ltd. v., 317
 Eason & Son, Ltd., Ross v., 183
 — & Son, Ltd., Sharples v., 482, 483
 East v. Bennett Brothers, Ltd., 75

East Barnet Valley Urban District Council,
 Att.-Gen. v., 332
 — London Railway Joint Committee v.
 Greenwich Union Assessment Com-
 mittee, 516
 Eaton v. Buchanan, 546, 547
 Ebbw Vale Urban District Council, Davies v.,
 191, 192
 Eccles & Co. v. Louisville and Nashville Railroad
 Co., 204, 492
 Eccles Provident Industrial Co-operative Society,
 Griffiths v., 283, 284
 Ecclesiastical Commissioners for England v.
 Page, 304, 305
 Edge (W.) & Sons, Ltd. v. Nicolls (W.) & Sons,
 Ltd., 459, 624
 Edinburgh (Assessor), Clark v., 517
 — (Assessor), Deards v., 517
 — (Assessor), North British Distillery Co.,
 Ltd. v., 517
 — Life Assurance Co., Sparenborg v., 291,
 292
 — Life Assurance Co. v. Y., 466
 — Lord Provost and Magistrates, O'Keefe v.,
 443
 Edmondson v. Copland, 434
 Edmunds v. "Peterston" (Owners), 381, 382,
 390, 391
 Edwards, Dobie v., 653
 — Dobie v.; *In the goods of* Haumer, 653
 Edwards-Moss, Mackenzie v.; *In re* Mackenzie,
 93
 Ehrlich, Hanau v., 101
 Eke v. Hart-Dyke, 357, 358
 Electrical Co., British Westinghouse Electric
 and Manufacturing Co., Ltd. v., 459
 Elkington v. London Association for Protection
 of Trade, 323, 324
 Ellerman Lines, Ltd. v. Clyde Navigation
 Trustees, 589
 Ellis v. Banyard, 13, 444
 — R. v., 117, 118, 135
 Ellson, R. v., 142
 Emerson, Palmer v., 635
 Emery, *Ex parte*; R. v. H.M. Prison, Stafford
 (Governor), 119, 120
 Empire Guarantee and Insurance Corporation,
 Ltd., Petitioners, 294
 Employers' Liability Assurance Corporation, Ltd.,
 Board of Trade v., 36
 Energlyn Colliery Co., Bevan v., 364
 Equitable Life Assurance Society of the United
 States and Mitchell, *In re* A Policy,
 293
 Equity Fire Insurance Co. and Union Bank of
 Canada, Thompson v., 289
 Erie County Natural Gas and Fuel Co. v. Carroll,
 149
 Errington v. Birt, 316, 317

Essex and Suffolk Accident Indemnity Society,
 — *Ld., Bradley v.*, 288, 289
 Essex Hall, *Ex parte*; *R. v. Income Tax Special*
Commissioners, 281;
 Ettridge, *R. v.*, 140
 Evans, Deacon *v.*, 566, 567
 — *Denison-Pender v.*; *In re Whitaker*, 214
 — *General Electric Co., Ld. v.*, 509, 510
 — *Pantlin v.*, 520, 521
 — *v. Rival Granite Quarry Co., Ld., North and*
South Wales Bank, Ld., Garnishees,
Pitman Claimant, 65, 66
 — *Williams v.*, 207, 208
 — *(R.) & Co., v. Astley*, 377
 — *Son, Leschner & Webb, Ld., Cole v.*, 386
 Evanson *v. Crooks*, 292
 Everett, Bolton *v.*, 614
 Everitt, *R. v.*, 125, 126
 Exeter Corporation, *Att.-Gen. v.*, 530
 "Ezardian," *The*, 582, 583

F.

F. v. F., otherwise *P.*, 272, 273
 Fabergé *v. Goldsmiths' Co.*, 527, 528
 Fagot *v. Fine*, 425, 426
 Fairbairne, Lawson & Co., *Ld., Thomas v.*, 395
 Fairbank, London County Council *v.*, 527
 Fairfield Shipbuilding and Engineering Co., *Ld.*
v. Gardner, Mountain & Co., Ld., 294,
 295
 Fairhurst *v. Price*, 529, 530
 Fakaruddin Mahomed Chowdhry, Mir Sarwarjan
v., 173, 174
 Falkirk Corporation *v. Russell*, 244
 "Fanny," *The*, 587
 Faris, *In re, Goddard v. Overend*, 659, 660
 — *In re, Goddard v. Overend (No. 2)*, 652,
 653
 Farmer *v. Scottish North American Trust, Ld.*,
 281
 Farrell *v. Limerick Corporation*, 443
 Fauntleroy *v. Beebe*, 201, 214
 Fawke *v. Miles*, 204
 Fear *v. Vickers*, 644
 Fearon *v. Warrenpoint Urban District Council*,
 332, 333
 Federal Supply and Cold Storage Co. of South
 Africa, *Ld. v. Angehrn and Piel*, 403
 Fedorenko, *Att.-Gen. for Dominion of Canada*
v., 166
 Feldmann, Gorenstein *v.*, 243
 Fennah *v. Midland Great Western Ry. of*
Ireland, 362
 Ferguson (J. B.), *Ld., Boyle v.*, 401, 402
 — *v. Derby, In re Derby's (Lord) Contract*,
 8, 9, 540, 541
 Fergusson, M^cQuater *v.*, 9
 Fernandez, Spring *v.*, 109

Fiat Motors, *Ld., In re Application of*, 460
 Fieldsend, Holme *v.*, 434
 Fife Coal Co., *Ld., Arnott v.*, 374
 — *Black v.*, 400, 419, 420
 Findlay, M^cRory *v.*, 351
 Fine, Fagot *v.*, 425, 426
 Firth, Greenwood *v.*; *In re Greenwood*, 634, 635
 Fischer, Raulin *v.*, 93
 Fisher *v. Great Western Ry. Co.*, 90, 91
 — *v. Ind, Coope & Co., Ld.; In re The Co.*,
 66, 433
 — *R. v. (No. 1)*, 118
 — *R. v. (No. 2)*, 134
 Fittall, Kent *v. (No. 4)*, 194, 195
 — *Kent v. (No. 5)*, 195
 Fitzsimmons, Cundiff *v.*, 432, 523, 524
 Fleay, Sydney Municipal Council *v.*, 159
 Fleming *v. London County Council*, 408
 Flemington Coal Co., *Ld., Thomson v.*, 385
 Fletcher *v. "Duchess" (Owners)*, 376
 Flower, Browne *v.*, 319, 320
 Foley *v. Foley*, 267
 Foote *v. Shaw Stewart*, 446, 447
 Ford, *In re*; *Myers v. Molesworth*, 656
 — *Haynes v.*, 354
 Forrester *v. Norton*, 337, 338
 Fort William (Landowners, etc., of), Grand
 Trunk Pacific Ry. Co. *v.*, 165
 Fortescue (L.), *Ld. v. Bradshaw*, 428
 Foster, De Jager *v.*, 162
 — *v. Richmond*, 184
 Foundling Hospital (Governors and Guardians)
v. Crane, 156, 157, 651
 Fowler, Wrottesley *v.*; *In re Wrottesley's Settle-*
ment, 553, 554
 Fox, *In re*; *Fox v. Moore*, 303
 — *v. Crystal Palace Co.; In re The Co.*, 81
 — *Freeman v.*, 600
 — *Mackie v.*, 234, 235
 France, Fenwick & Co., *Ld., Cory & Sons, Ld. v.*,
 372
 Free (Thomas) & Sons, *Ld., In re*, 86
 Freeman *v. Fox*, 600
 — *v. Freeman and Freeman*, 272
 — *(G.) & Sons v. Chester Rural District*
Council, 17
 Freeth & Pocock, *Ld., Chuter v.*, 229
 Friendly Society of Ironfounders of England,
 Ireland and Wales *v. Ingall*, 620
 Fry *v. Cheltenham Corporation*, 372, 500
 — *Roberts v.; In re Gardner*, 215

G.

Gadd *v. Thompson*, 404
 Gallagher, Langham Steamship Co., *Ld. v.*, 578,
 579
 Galloways, *Ld., Noden v.*, 359
 Galula *v. Pintus*, 429

LIST OF CASES DIGESTED.

- Gambles *v.* McEacharn : *In re* McEacharn, 559, 652
- Gant *v.* Hobbs, *In re* Robinson's Settlement, 559, 560
- Gardner, *Ex parte*; Roberts *v.* Fry, 215
- Mountain & Co., Ltd., Fairfield Shipbuilding and Engineering Co., Ltd. *v.* 294, 295
- Gardam, Chesterton *v.*, 198
- Garland and Another, R. *v.*, 136
- Garner (Henry), Ltd., Prested Miners' Gas Indicating Electric Lamp Co., Ltd. *v.*, 100, 101, 538
- Garrett *v.* Waddell & Son, 399
- Garrett-Pegge, R. *v.* : *Ex parte* Brown, 349
- Garwood *v.* Garwood, 151, 152
- Gas Light and Coke Co. and Metropolitan Water Board, Stacey *v.*, 118
- Light and Coke Co., Maass *v.*, 176, 177
- Gas and Waterworks Supply and Construction Co., Ltd., Titchhurst and District Water and Gas Co., Ltd. *v.*, 648
- Gatfield's Case, *In re* Metropolis and Counties Permanent Investment Building Society, 47, 48
- Geikie, *In re* ; Robson *v.* Paterson, 53
- Gellibrand *v.* Carew ; *In re* Carew's Trusts, 551
- General Accident Fire and Life Assurance Corporation, New Fenix Compagnie Anonyme D'Assurance de Madrid *v.*, 494, 495
- Electric Co., Ltd. *v.* Evans, 509, 510
- Incandescent Co., Ltd., Armorduct Manufacturing Co., Ltd. *v.*, 205, 206
- Income Tax Commissioners for Offlow, R. *v.*, 280
- Motor Cab Co., Ltd., Smith *v.*, 389, 390, 397, 398, 401
- Trading Co., Ltd., and Van Stolk's Commissiehandel, *In re*, 536
- Genforsikrings Aktieselskabet (Skandinavia Reinsurance Co. of Copenhagen) *v.* Da Costa, 531, 532
- George *v.* Davies, 403
- *v.* Thomas, 349
- Gepp, Colchester Borough Council *v.*, King Third Party, 255
- Ghaswala *v.* Secretary of State for India in Council, 173
- Giddy, Williams *v.*, 159, 160
- Gilbert, *In re*, 208, 209
- Gilhooley, Macandrew *v.*, 369
- Gill, R. *v.* : *Ex parte* McKim, 613
- Gillespie, Davies *v.*, 387
- Gillow *v.* Durham County Council, 189
- Gilmour *v.* Dorman, Long & Co., 383
- Ginn *v.* Robey, 496
- Ginsberg, Rouse *v.*, 541, 542
- Glamorgan County Asylum (Committee of Visitors) *v.* Cardiff Guardians, 469
- Glasgow and Newport News Steamship Co., Ltd. *v.* Clyde Navigation Trustees, 589
- and South Western Ry. Co., Boyd and Forrest *v.*, 422, 423
- Assurance Corporation, Ltd. *v.* Symondson (W.) & Co., 296
- Corporation *v.* Lorimer (or Riddell), 325, 401
- Navigation Co. *v.* Iron Ore Co., 491, 492
- Parish Council *v.* Martin, 285, 292
- Gleeson, *In re* ; Smyth *v.* Gleeson, 661
- Glenboig Union Fire-clay Co., Caledonian Ry. Co. *v.*, 421
- Glendinning, Hope (John D.) & Co. *v.*, 607, 608
- Glennville *v.* Selig Polyscope Co., 103
- Glyn Mills, Currie & Co., Kerrison *v.*, 424
- Goatly, *Ex parte* ; *In re* Jones, 24, 25, 36
- Goddard *v.* Overend ; *In re* Faris, 659, 660
- *v.* Overend ; *In re* Faris (No. 2), 652, 653
- Godinho, R. *v.*, 117
- Godsell *v.* Lloyd, 39
- Godspeed, R. *v.*, 128
- Godstone Rural District Council, R. *v.*, 338
- Gold, Watney *v.* ; *In re* Watney, 662
- Golden Horseshoe Estates Co. *v.* R., 161
- Golding, *In re*, 666
- Golds, Wandsworth Borough Council *v.*, 414, 415
- Goldsmiths' Co., Fabergé *v.*, 527, 528
- Gompertz, *In the Estate of* ; Parken *v.* Gompertz, 208
- Gonville's Trustees *v.* Patent Caramel Co., Ltd., 232, 233
- Goodall, Boehm *v.*, 454, 521
- Gordon *v.* Love, 226, 227
- Gordon-Cumming *v.* Houldsworth, 542, 543
- Gorenstein *v.* Feldmann, 243
- Gough *v.* Dames ; *In re* Bythway, 212
- *v.* Staffordshire County Council (Clerk) 193, 194
- Gowrie and Blockhouse Collieries, Burchell *v.*, 5, 7
- Grace, Smith & Co., Lloyd *v.*, 596, 601
- Graham-Wigan, *In re*, 187, 188
- Gramophone Co., Ltd. *v.* Magazine Holder Co. 456
- Grand Trunk and Pacific Ry. Co., Aktieselskabet Dampskib "Hercules" *v.*, 480, 481
- Trunk Pacific Ry. Co. *v.* Landowners, etc., of Fort William, 165
- Trunk Pacific Ry. Co. *v.* R., 164, 165
- Trunk Ry. Co. of Canada *v.* Barnett, 444
- "Gratia," The, 4
- Gratton *v.* Machen ; *In re* Towndrow, 634
- Gray *v.* Baddeley ; *In re* Seabrook, 474
- Great Central Ry. Co., Jenkins *v.*, 50, 51, 606, 607

- Great Central Ry. Co., Macclesfield Corporation, *v.*, 256, 257
 — Central Ry. Co. *v.* Midland Ry. Co., 506, 507
 — Central Ry. Co., Sheffield District Ry. Co. *v.*, 507
 — Eastern Ry. Co. *v.* Bishop's Stortford Union Assessment Committee and Overseers of Parish of Thorley, 515
 — Eastern Ry. Co., Lambert *v.*, 510
 — Northern Ry. Co. *v.* Hunslet Union, 515
 — Western Ry. Co., Fisher *v.*, 90, 91
 — Western Ry. Co., Spillers & Bakers, Ltd. *v.* (Association of Private Owners of Railway Rolling Stock Interveners), 507
 — Western and Metropolitan Ry. Companies *v.* Kensington Assessment Committee, 516
- Green, *In re*; Green *v.* Meinall, 174, 265
 — *v.* Hackney Corporation, 415
 — *v.* Rheinberg, 433
- Green's Application, *In re*, 460, 461
- Greenberry, *In re*; Hops *v.* Daniell, 660
- Greenwich Union Assessment Committee, East London Railway Joint Committee *v.*, 516
- Greenwood, *In re*; Greenwood *v.* Firth, 634, 635
 — Walton-le-dale Urban District Council *v.*, 258
- Gregg *v.* Kennedy, 197, 198
- Gregory *v.* Torquay Corporation, 109, 110, 326, 327, 501
- Gresley's Settlement, *In re*; Willoughby *v.* Drummond, 662, 663
- Greville-Smith *v.* Tomlin, 337
- Grey, Payne *v.*; *In re* Stamford and Warrington (Earl), 464
 — Payne *v.*; *In re* Stamford and Warrington (Earl), (No. 2), 254
 — Thynne *v.*; *In re* Thynne, 39, 552
- Greyvensteyn *v.* Hattingh, 162
- Grice, House Property and Investment Co. *v.*, 412, 413
- Griessemann *v.* Carr; *In re* Mackay, 633, 634
- Griffiths, *Ex parte*, R. *v.* Allen, 194
 — *v.* Benn, 325, 493
 — *v.* Eccles Provident Industrial Co-operative Society, Ltd., 283, 284
- Griffiths's Settlement, *In re*; Griffiths *v.* Wagborne, 663, 664, 669, 670
- "Grovechurst," The, 584
- Groves *v.* Burroughes & Watts, Ltd., 377, 378
- Guests Estates, Ltd. *v.* Milner's Safes, Ltd., 184
- Guillet *v.* Guillet, 263
- "Gunford" Ship Co., Southern Marine Mutual Association, Ltd. *v.*, 295, 296
 — Ship Co., Thames and Mersey Marine Insurance Co. *v.*, 295, 296
- Gutteres, Abbey *v.*, 321, 322
- Gwynne, West *v.*, 320, 321
- H.
- Hackney Borough Council, Parrish *v.*, 514
 — Corporation, Green *v.*, 415
 — Union, Kingston-upon-Hull Incorporation for the Poor *v.*, 471, 472
- Haddington Island Quarry Co. *v.* Huson, 167
- Haggith, Sharpe *v.*, 548
- Hales *v.* Buckley, 307
- Halkett, R. *v.*; *Ex parte* Butnick, 617
- Hall *v.* Burnell, 542
 — Cardiff Corporation *v.*, 394
 — *v.* Hall, 264
 — Hamp-Adams *v.*, 480
 — Stepney Spare Motor Wheel Co., Ltd. *v.*, 458, 459
 — Tamworth Colliery Co., Ltd. *v.*, 370, 371
 — *v.* Whiteman, 40
- Hall's Charity, *In re*, 256
- Hallett, R. *v.*, 114, 115
- Halliday *v.* Taffs, 565, 566
- Halstead, Stuart and Simpson *v.*, 619
- Halvorsen *v.* Salvesen, 379
- Hamilton *v.* Martin, 327
 — Patten *v.*, 78
- Hammersmith Corporation, Short *v.*, 253, 254
- Hammond, *In re*; Burniston *v.* White, 657
- Hamp-Adams *v.* Hall, 480
- Hanau *v.* Ehrlich, 101
- Hanbury *v.* Llanfrecfa Upper Urban District Council, 645, 646
- Hancox, Sapcote & Sons *v.*, 373
- Hanmer, *In the goods of*; Dobie *v.* Edwards, 653
- Hann *v.* Plymouth Corporation, 192
- Har Narain Singh, Kishen Parshad *v.*, 173
- Harcourt's Trusts, *In re*; White *v.* Harcourt, 553
- Harding *v.* Brynndu Colliery Co., Ltd., 380, 397
 — *v.* Royal Mail Steam Packet Co., 374
- Hardman, *Ex parte*; R. *v.* Allen, 352, 353
- Hardy, *Ex parte*; R. *v.* Bros, 348
- Hardy's Crown Brewery, Ltd., and St. Philip's Tavern, Manchester, *In re*, 303, 304
- Harrington, Carolan *v.*, 373, 374
- Harris *v.* Chesterfield (Earl), 222, 223
 — White (W.) & Sons *v.*, 393
 — Third Party, Cope *v.* Bennett (No. 1), 41
 — Third Party, Cope *v.* Bennett, 208
- Harrison, Chappell & Co. *v.*, 179
- Hart-Dyke, Eke *v.*, 357, 358
- Hartland, *In re*; Banks *v.* Hartland, 152, 606
- Hartlepool Electric Tramways Co., Ltd. *v.* Hartlepool Corporation, 628, 629
- Harvey, de Brimont *v.*; *In re* Sheppard, 632, 633
 — Knapp *v.*, 177

- Hall v. Bellwell*, 227, 228
Hampden v. Leslie's Will, 637
Hartnoll v. Cussey, 162
Hartshill v. Alexander, 512
Hartley v. Hutton (E.) & Co., Ltd., 106, 243
Hawkins v. Powells Tillery Steam Coal Co., Ltd., 375, 376
Hay v. Jackson & Co., 587
 — *R. v.*, 111
 — *Currie, King (J.), Ltd. v.*, 428
Haydon v. Haydon, 37
Haylet v. Thompson, 567
Haynes v. Ford, 354
"Hazelmere," The, 585
Heard, R. v., 126
Hebert v. Royal Society of Medicine, 493, 494
Heerman. In the Estate of, 209
Highton, Kirkcopp v., 235
Helliwell v. Haskins, 227, 228
Henderson, McIntyre v., 122, 123
Henderson's Nigel Co., Ltd., In re, 88
Hendon Rural District Council, Thomas v., 260
 — *Urban District Council, Bass v.*, 400
Henricksen v. "Swanhilda" (Owners), 373
Herbert, Barker v., 148, 419
"Hero," The, 583
Herron v. Martin, 314, 315
Hertfordshire County Council, Shrimpton v., 439, 440
 — *Justices, R. v.*, 344, 345
Hesketh, Ex parte; In re Southport and Lytham Tramroads Act, 1900..., 627, 628
Hessin (T.) & Co., Perry & Co., Ltd. v., 625
Hewitt v. "Duchess" (Owners), 376
 — *v. Jeans; In re Macnamara's Estate*, 664, 665
Hickey, R. v., 115
Hicks, Chaplin v., 151
Hickson, Leach v., 367, 368
Higginson, R. v., 138
Higgs, Corke v., 187
Higham, Calico Printers' Association, Ltd. v., 391
"Highland Loch," The, 589
Hill v. Mathie; In re Whitfield, 264
 — *v. Phoenix Veterinary Supplies, Ltd.*, 10
 — *R. v.*, 112
Hill's Plymouth Co., Ltd., Pope v., 379
Hincks v. Roberts; In re Croyden, 329
Hirachand Punamchand v. Temple, 96, 97
H. M. Advocate, Stirling v., 126, 127
H.M. Prison, Stafford (Governor), R. v.; Ex parte Emery, 119, 120
Hobbs, Cook v., 526
 — *Gant v.; In re Robinson's Settlements*, 559, 560
Hodge v. Matlock Bath and Scarthin Nick Urban District Council and Nuttall, 334
Hodgson, Ex parte; R. v. Hunton, 337
Hodson v. Blanchards (London), Ltd., 68
Hogarth & Son, M'Lauchlan v., 446
Holden, R. v., 133
Holder, Turner v., 231
Holland (W.) & Sons, Ltd., Riley v., 384
Holloway, Ex parte; R. v. Metropolitan Police Commissioner, 413
 — *v. Crow*, 189, 190
 — *London General Omnibus Co., Ltd. v.*, 247
 — *Brothers (London), Ltd., Burrell v.*, 368
Holme v. Fieldsend, 434
Holt, Wells v.; In re Lea, 656
Home and Foreign Investment and Agency Co., In re, 82
Honor v. Painter, 359, 360
Hoogsteel, Cartwright v., 605, 606
Hope, In re; Tarleton v. Hope, 556, 557
 — *(John D.) & Co. v. Glendinning*, 607, 608
Hopkins, R. v.; Ex parte Lovejoy, 14
Hops v. Daniell; In re Greenberry, 660
Hordern v. Horden, 453, 454
Horn v. Admiralty (Lords Commissioners), 399
Horne, Burdett v., 266, 267
Horsfall, In re; Huddleston v. Crofton, 156, 475
Horton v. Jones; In re Litchfield, 665
Hosegood & Sons v. Wilson, 393
Houghton, Dairy Supply Co., Ltd. v., 229
 — *Thomas, Ltd. v.*, 225
Houlder Brothers & Co., Ltd., Compania Sansinena de Carnes Congeladas v., 485
Houldsworth, Bennett v., 654
 — *Gordon-Cumming v.*, 542, 543
Houndle, London County Council v., 528
House Property and Investment Co. v. Grice, 412, 413
Howarth v. Samuelson (Sir B.) & Co., 390
Howell v. Bradford & Co., 363
Howley Park Coal and Cannel Co., London and North-Western Ry. Co. v., 505, 506
Hoyles, In re; Row v. Jagg, 55, 92
 — *In re; Row v. Jagg (No. 2)*, 636
Huckle v. London County Council, 362, 363
Huddleston v. Crofton; In re Horsfall, 156, 475
Hudson, In re; Spencer v. Turner, 152
 — *Brothers, Ltd., Mowats, Ltd. v.*, 314
Hughes, Cory Brothers & Co., Ltd. v., 394, 395
 — *v. Dublin United Tramways Co., Ltd.*, 488, 489
 — *London County Council v.*, 408, 409
 — *& Co., In re*, 454
Hull Corporation and Martin, Smith v., 440
Hulse v. Hulse, 268
Hulton (E.) & Co., Ltd., Hawke v., 106, 243
Hume Nisbet's Settlement, In re, 558
Humphreys, Ex parte; R. v. Metropolitan Police (Commissioner), 414
Hunslet Union, Great Northern Ry. Co. v., 515
Hunt (W.) & Sons, Ltd., Ball v., 358, 359

Huntley Brothers *v.* Backworth Collieries (Owners), 176
 Hunton, R. *v.*; *Ex parte* Hodgson, 337
 "Huntsman," The, 585, 586
 Hurlbatt, *In re*; Hurlbatt *v.* Hurlbatt, 463, 464
 Huron and Erie Loan and Savings Co. and others, Lord Advocate *v.*, 83, 84
 Huson, Haddington Island Quarry Co. *v.*, 167
 Hutchins Brothers *v.* Royal Exchange Assurance, 296
 Hutchinson, R. *v.*, 133
 — & Co., *In re*, 26
 Hyde Park Place Charity, *In re*, 52
 Hyman, Rose *v.*, 319
 Hyndman *v.* Craig & Co., 379
 "Hyrcania" (Owners), Shore *v.*, 392
 Hythe Corporation, National Telephone Co. *v.*, 615, 616

I.

Income Tax Special Commissioners, R. *v.*; *Ex parte* Essex Hall, 281
 Ind, Coope & Co., Ltd., *In re*; Fisher *v.* The Co., 66, 433
 — Coope & Co., Ltd., *In re*; Ind, Coope & Co., Ltd., Arnold *v.*, 66, 433
 — Coope & Co., Ltd., *In re*; Ind, Coope & Co., Ltd., Knox *v.*, 66, 433
 Independent Press Cable Association of Australasia, Ltd., Allison *v.*, 481
 Ingall, Baker *v.*, 620
 — Friendly Society of Ironfounders of England, Ireland, and Wales *v.*, 620
 Inland Revenue, Crookston Brothers *v.*, 279
 — Revenue Commissioners, Deddington Steamship Co. *v.*, 532, 533
 — Revenue Commissioners, Mount-Edgumbe (Earl) *v.*, 534
 — Revenue Commissioners, Northumberland (Duke) *v.*, 533
 Insoles, Ltd., Stevens *v.*, 368
 International Sponge Importers, Ltd. *v.* Watt (Andrew) & Sons, 5, 6
 Invieta Manufacturing Co., Ltd., Ash (Claudius) Son & Co. *v.*, 623
 Ireland, R. *v.*, 142
 Iron Ore Co., Glasgow Navigation Co. *v.*, 491, 492

J.

J. (An arranging Debtor), *In re*, 598
 Jacks, Pharmaceutical Society *v.*, 405, 406
 Jackson, Ashover Fluor Spar Mines, Ltd. *v.*, 151
 — *v.* Leighton; *In re* Lawley, 213
 — *v.* London County Council and Chappel, 440

Jackson *v.* Mahon, 196, 197
 — *v.* Mulliner (A. G.) Motor Body Co., 219, 220
 — *v.* Rotax Motor and Cycle Co., 535, 536
 — *v.* Scotstoun Estate Co., 374
 — & Co., Hay *v.*, 587
 Jagg, Row *v.*; *In re* Hoyles, 55, 92
 — Row *v.*; *In re* Hoyles (No. 2), 636
 James, *In re*; James *v.* Jones, 215
 Jarvis, Pankhurst *v.*, 129
 Jay, Angel *v.*, 108, 423, 424
 Jeans, Hewitt *v.*; *In re* Macnamara's Estate, 664, 665
 — White *v.*, 285
 Jenkins *v.* Great Central Ry. Co., 50, 51, 606, 607
 — *v.* Standard Colliery Co., 387, 388
 — *v.* Thomas, 355
 Jenner *v.* South Eastern Ry. Co., 444, 445
 Jevons, *In re*; Jevons *v.* Public Trustee, 653, 654
 Jewell, Burgess & Co., Ltd. *v.*, 395
 Jinks *v.* Jinks, 269, 270
 "Johannesburg" (Owners), Kitchenham *v.*, 378
 Johnson, R. *v.*, 136
 — *v.* Wootton, 368, 369
 Johnston, *In re*; Mills *v.* Johnston, 632, 638
 — *v.* O'Neill, 223
 Johnstone *v.* McKenzie, 598
 Jones, *Ex parte*; R. *v.* Propert, 513
 — *In re*; *Ex parte* Goatly, 24, 25, 36
 — *v.* Burnell, 605
 — Horton *v.*; *In re* Litchfield, 665
 — James *v.*; *In re* James, 215
 — *v.* Lee, 13
 — *v.* Llanrwst Urban District Council, 493, 494, 641, 642, 644
 — *v.* Merthyr Tydvil Union, 470
 — Moran *v.*, 138
 — *v.* North Vancouver Land and Improvement Co., 69
 — *v.* Pacaya Rubber and Produce Co., Ltd., 83
 — Pontypridd Urban District Council *v.*, 258, 259
 — R. *v.* (No. 1), 125
 — R. *v.* (No. 2), 132
 — R. *v.* (No. 3), 138, 139
 — Williams *v.*, 436
 — Windor *v.*; *In re* White, 655, 656
 — (Joseph) & Co. *v.* West Derby Union, 516, 517
 Jones-Parry, Yap Hon Chin *v.*, 172
 Josselsohn *v.* Weiler, 250, 251
 Joy, *Ex parte*, 352
 Joyce, *Ex parte*; *In re* Merrick, 599
 — American Thread Co. *v.*, 280
 — Willis, Faber & Co., Ltd. *v.*, 6, 7

K.

- Ball v. Chandra Sank, Bhagadati Barmanya v.*
 173
Barry, Merry and Cunningham, Ltd., 385
Barrington v. "Cassan" (Owners), 387
Beattie v. Rennie, 651
Benson v. Benson, 379
Brace v. Lewis Merthyr Consolidated Collieries,
Ld., 402, 403
Brattin, R. v., 127, 128
Braywell and Flint & Co., Ltd. v. L.
Keeling, New Monckton Collieries, Ltd. v., 369,
 370
Kelleher, In re, 233
Kelly v. Auchenlea Coal Co., Ltd., 361, 362
 — *Munro v.*, 239, 240
Kempthorne, Rose v., 130
Kemp-Welch v. Kemp-Welch: In re Sparkes,
 662
Kennedy, Gregg v., 197, 198
Kensington Assessment Committee, Great
Western and Metropolitan Ry. Cos. v.,
 516
 Royal Borough Council, Paddington
 Borough Council *v.*, 415, 416, 418
Kent v. Pittall (No. 4), 194, 195
 — *v. Pittall (No. 5)*, 195
Kenyon v. Walford; In re Walford, 477, 669
Kerr v. Baird (William) & Co., Ltd., 381
Kerrigan, Wright v., 389
Kerrison v. Glyn, Mills, Currie & Co., 424
Keymer v. Reddy, 482
Kidman, Browne v., 360
Kidner v. Daniels, 611
Kilkenny, Stewart v., 496
Kinahan & Co., Ltd. v. Parry, S
"King," The, 581
King v. Dopson, 95, 96
 — *v. Phoenix Assurance Co.*, 366
 — *Wilkie v.*, 620
 — *(J.) Ltd. v. Hay Currie*, 428
 — *Third Party, Colchester Borough Council*
v. Gepp, 255
Kingsbury Collieries, Ltd., Titterton v., 562, 642,
 643
"Kingsland," The, 577
Kingston-upon-Hull Incorporation for the Poor
v. Hackney Union, 471, 472
Kinnell v. Walker, 324, 325, 487
Kirksopp v. Heighton, 235
Kish v. Taylor, 572, 574, 579
Kishen Parshad v. Har Narain Singh, 173
Kitchen, Aylard and Craddock, Ex parte; In re
A Debtor, 26
Kitchenham v. "Johannesburg" (Owners),
 378
Kitson, In re: Ex parte Sugden (T.) & Son,
Ld., 30

- Klawanski v. Premier Petroleum Co., Ltd.;*
Prudential Trust Corporation, Ltd.
(Third Parties), Maisel (Fourth Party),
 486
Klein, Lindsay v., 575, 576
Knapp v. Harvey, 177
Knight v. City of London Brewery Co., 303
Knight Steamship Co., Ltd., Markt & Co., Ltd. v.
 486
 — *Steamship Co., Ltd., Sale & Frazar, Ltd. v.*
 486
Knill v. Dumergue, 172, 173
Knott v. Tingle, Jacobs & Co., 365
Knox v. Ind, Coope & Co., Ltd.; In re The Com-
pany, 66, 433
Koffyfontein Mines, Ltd., Mosely v., 82
 — *v. Mosely*, 62
Kyle, McGinty v., 363, 364
Kynance Steamship Co., Ltd. v. Young, 297, 298
Kynoch, Ltd. v. Rowlands, 327, 328

L.

- L. v. L. (No. 1)*, 276
 — *(No. 2)*, 269
Lacon's Settlement, In re; Lacon v. Lacon,
 558
Ladoga, Ltd., Davies-Evans v. (The "Kings-
land"), 577
Lambert v. Great Eastern Ry. Co., 510
 — *v. Thomas*, 517, 535
Lambton, Richmond v.; In re Cadogan's (Earl)
Settlements, 475, 476
Lamont v. Rodger, 225, 228
Lanarkshire Coalmasters Association, Cale-
donian Ry. Co., Glasgow and South
Western Ry. Co., and North British
Ry. Co. v., 508
Lancashire Plate Glass, Fire and Burglary
Insurance Co., Ltd., In re, 293, 294
Lancaster, Ex parte; In re O'Shea, 32, 33
Langham Steamship Co., Ltd. v. Gallagher, 578,
 579
Lanston Monotype Corporation, Ltd. v. Ander-
son, 281, 282
Lapointe v. Larin, 169
Larin, Lapointe v., 169
Larkins, R. v., 141
Lauderdale (Earl), Wedderburn v., 545
Loughton v. Commissioners of Port Erin, 604,
 605
Law, City of Birmingham Tramways Co., Ltd.
v., 627
Law Car and General Insurance Corporation,
In re, 67
 — *Guarantee Trust and Accident Society,*
Ld. v. Munich Reinsurance Co., 291
 — *Society (No. 25), Ex parte; In re A*
Solicitor, 602, 603

- Law Society, *Ex parte*; *In re* A Solicitor, 603
 — Society, *Ex parte*; *In re* C. (a Solicitor), 603
 — Society, *Ex parte*; *In re* D. (a Solicitor), 603
- Lawford v. Pryce; *In re* Pryce, 94, 95
- Lawley, *In re*; Jackson v. Leighton, 213
- Lawson, Barnes v., 497
- Lawton, Park v., 74
- Layton, Nash v., 177, 178
- Lea, *In re*; Wells v. Holt, 656
- Leach v. Hickson, 367, 368
 — v. Oakley Street & Co., 378
 — R. v., 114
 — & Co., Ltd. v. Royal Mail Steam Packet Co., 568
- Leaver v. Pontypridd Urban District Council, 445
- Lee v. "Bessie" (Owner), 370
 — Jones v., 13
- Leech and Simpkinson, *Ex parte*; *In re* Sunderland, 28, 29
- Leeds Corporation v. Sugden, 277, 278
- Lees v. Dunkerley Brothers, 371, 372, 446
- Lefkowitz, Wentworth Loan and Discount Co. v., 427
- Leicester Corporation, Att.-Gen. v., 199
 — Guardians v. Trollope, 43
- Leighton, Jackson v.; *In re* Lawley, 213
- Leith Dock Commissioners v. Leath Magistrates, 644
- Lennox, Trevanion v.; *In re* Trevanion, 520
- Le Roy, Clayton v., 537, 630
- Leslie v. Leslie, 269
- Leslie's Hassop Estates, *In re*, 637
 — Will, *In re*; *In re* Hassop Settled Estates, 637
- L'Estrange v. Winniett, 554, 555
- Lever Brothers, Ltd. v. Masbro Equitable Pioneers Society, Ltd., 624, 625
- Levi, Tumin v., 496, 497
- Levy, R. v., 128
- Lewes Corporation, Att.-Gen. v., 561, 643
- Lewis, R. v., 143
 — Watling v., 156
- Lewis Merthyr Consolidated Collieries, Ltd., Keates v., 402, 403
- Liberal Opinion, Ltd., Simmons v.; *In re* Dunn, 601
- Lilley v. Moore; *In re* Shuttleworth, 604
 — R. v.; *Ex parte* Taylor, 349, 350
- Limerick Corporation, Farrell v., 443
- Lindner & Co., *In re*, 80
- Lindsay v. Klein, 575, 576
 — Woods v., 242
- Lion Brewery Co. Ltd., Smith v., 280, 281, 302
- Litchfield, *In re*; Horton v. Jones, 665
- Little and Dunning, R. v.; *Ex parte* Wise, 347
- Liverpool Assessment Committee, Young & Co. v., 518
- Liverpool Corporation v. Chorley Union Assessment Committee and Withnell Overseers, 518
 — Cotton Association and Hapke & Co., Merrifield, Ziegler & Co. v., 16, 98, 618
 — London and Globe Insurance Co. v. Bennett, 278
- Llanfrechfa Upper Urban District Council, Hanbury v., 645, 646
- Llanrwst Urban District Council, Jones v., 493, 494, 641, 642, 644
- Llewellyn, *In re*; Llewellyn v. Llewellyn, 555
- Lloyd, *In re*; Waters v. Lloyd, 328
 — Godsell v., 39
 — v. Grace, Smith & Co., 596, 601
- Local Government Board (Ireland) and County Tyrone Local Pension Committee, R. (Cairns) v., 341
- Locke, R. v., 331, 332
- Lockett Brothers & Co., Ltd., British and Mexican Shipping Co., Ltd. v., 577, 578
- Lodge's Patent, *In re*, 457
- Logan (Thomas), Ltd. v. Davis, 72
- London (Bishop) v. Whiteley; *In re* Whiteley, 657
 — and Brazilian Bank, Société Coloniale Anversoise v., 22, 23
 — and North-Western Ry. Co. v. Howley Park Coal and Cannel Co., 505, 506
 — and North-Western Ry. Co., Manchester Ship Canal Co. v., 508, 509
 — and North-Western Ry. Co. v. South Eastern Ry. Co., 509
 — and North-Western Ry. Co. and other Railway Companies, Members of the Railway Clearing House v. Society of Motor Manufacturers and Traders, Ltd., 509
 — and South Western Canal Co., Ltd., *In re*, 71
 — and Westminster Loan and Discount Co., Ltd. v. Bilton, 201
 — Association for Protection of Trade, Elkington v., 323, 324
 — County Council, Bedford (Duke) v., 528, 529
 — County Council v. Bermondsey Bioscope Co., 616
 — County Council v. Cannon Brewery Co., 410
 — County Council v. Clark, 410, 411
 — County Council, Cooke v., 90
 — County Council v. Fairbank, 527
 — County Council, Fleming v., 408
 — County Council v. Houndle, 528
 — County Council, Huckle v., 362, 363
 — County Council v. Hughes, 408, 409
 — County Council, Metropolitan Ry. Co. v., 408

- London County Council, *Minturn v.* 111
 — County Council, *Pears (A. & F.), Ltd. v.*, 109, 110
 — County Council *v. Price's Candle Co., Ltd.*, 113
 — County Council, *R. v. ; Ex parte* Thornton, 146, 147
 — County Council, *Re v.*, 108
 — County Council, *Royal Albert Hall v.*, 616, 617
 — County Council *v. Shoreditch Borough Council*, 513
 — County Council, *Standing Joint Committee of Quarter Sessions and County Council of the County of London v.* (No. 182), 418, 419
 — County Council *v. Turner*, 527
 — County Council and Great Eastern Ry. Co., *Woodford and Other Urban District Councils intervening*, 510
 — County Council and Chappel, *Jackson v.*, 440
 — County Council and March, *Crittall Manufacturing Co. v.*, 44, 45
 — Evening Newspapers Co., *Ltd.*, *Outram (George) & Co., Ltd. v.*, 497, 498
 — General Omnibus Co., *Ltd. v. Holloway*, 247
 — , Gloucestershire and North Hants Dairy Co. *v. Morley and Lanceley*, 411, 412
 — Joint Stock Bank, *Ltd. v. British Amsterdam Maritime Agency, Ltd.*, 573
 — Road Car Co., *Ltd.*, *Willmott v.*, 106, 320
 Long, *Ex parte ; R. v. Montgomery and others, Justices*, 346
 Loughton *v. Winwick Asylum (Visitors Committee)*, 184, 185
 Lord Advocate, *Bull v.*, 230
 — *v. Huron and Erie Loan and Savings Co. and others*, 83, 84
 — *v. Walker Trustees*, 462, 545, 546, 606
 Lorimer (or Riddell), *Glasgow Corporation v.*, 325, 401
 Louisville and Nashville Railroad Co., *Eccles & Co. v.*, 204, 492
 Love, *Gordon v.*, 226, 227
 Lovejoy, *Ex parte ; R. v. Hopkins*, 14
 Lovell & Christmas, *Ld. v. Wall*, 619
 Lovitt, *R. v.*, 167
 Lowenfeld, *Scarpetta v.*, 93
 Lowery *v. Walker*, 12, 13
 Lowther and Blankley, *Times Cold Storage Co. v.*, 109
 — and Blankley *v. Times Cold Storage Co. and New Zealand Shipping Co.*, 109
 Lunt *v. Sutton Heath and Lea Green Collieries, Ltd.*, 392
 Lupton, *In re ; Ex parte Lupton*, 27
In re ; Ex parte Official Receiver, 34, 35
 Lurcott *v. Wakely and Wheeler*, 317, 318
 Lyall *v. Broadwood ; In re Broadwood*, 212
 Lyngington Rural District Council, *Paris v.*, 251, 252
- M.
- Maass *v. Gas Light and Coke Co.*, 176, 177
 M'Adam *v. City and Suburban Dairies, Ltd.*, 324
 Macalister *v. Steedman*, 493
 Macandrew *v. Gilhooly*, 369
 McBean, *Ex parte*, 147
 M'Cartan *v. Belfast Harbour Commissioners*, 400, 401
 M'Carthy, *Att.-Gen. for Ireland v.*, 644, 645
 — *v. Capital and Counties Bank*, 25
 McClelland *v. Manchester Corporation*, 242
 Macclesfield Corporation *v. Great Central Ry. Co.*, 256, 257
 M'Connell and Reid *v. Smith*, 16, 17
 McDaid *v. Steel*, 382
 MacDermott, *In re*, 494
 McDermott *v. "Tintoretto" (Owners)*, 364, 365
 MacDevitte, *Newell v.*, 66
 M'Dougall *v. M'Dougall*, 398
 McEacharn, *In re ; Gambles v. McEacharn*, 559, 652
 McFarland *v. Bank of Montreal and Royal Trust Co.*, 166
 McFie, *Mallam v. ; In re Clifford*, 53, 54, 660, 661
 M'Geown *v. Workman, Clark & Co., Ltd.*, 393
 M'Ghee *v. Summerlee Iron Co., Ltd.*, 396
 M'Gillicuddy *v. Cassidy*, 483
 MacGillivray *v. Northern Counties Institute for the Blind*, 398, 399
 McGinty *v. Kyle*, 363, 364
 McGlade *v. Royal London Mutual Insurance Society, Ltd.*, 75, 76, 235, 236
 Machardy, *R. v.*, 141, 142
 Machen, *Gratton v. ; In re Towndrow*, 634
 McInally *v. Blackledge*, 108
 McIntyre, *Donaghue v.*, 308, 309
 M'Intyre *v. Henderson*, 122, 123
 Macintyre Brothers & Co., *Royal Mail Steamship Co., v.*, 568
 Mackay, *In re ; Griessemann v. Carr*, 633, 634
 — *v. Rosie*, 372, 373
 Mackenzie, *In re ; Mackenzie v. Edwards-Moss*, 93
 — *R. v.*, 138
 McKenzie, *Johnstone v.*, 598
 McKeown *v. McMurray*, 383
 Mackie *v. Fox*, 234, 235
 McKim, *Ex parte ; R. v. Gill*, 613
 Mackinlay, *In re ; Scrimgeour v. Mackinlay*, 664
 Maclaren *v. Public Trustee ; In re Robinson*, 328, 329
 McLaren *v. Caledonian Ry. Co.*, 385, 386
 M'Lauchlan *v. Anderson*, 389

- McLauchlan v. Hogarth & Son*, 446
 — *v. Renton*, 241, 242
McLauchlan, R. v., 238
McLean, R. v., 121
McLoughlin v. Warrington Corporation, 443
McMahon, In re; *Wells v. Tyrer*, 668
McMurray, McKeown v., 383
Macnamara's Estate, In re; *Hewitt v. Jeans*, 664, 665
McNeice v. Singer Sewing Machine Co., Ltd., 388
Macpherson, Traynor, v., 242
McQuater v. Fergusson, 9
McRory v. Findlay, 351
Magazine Holder Co., Gramophone Co., Ltd. v., 456
Magnum, In re; *Ex parte Salaman*, 33, 34
Maguire v. Quinn, 242, 243
Mahon, Jackson v., 197
Maisel (Fourth Party), Klawnski v. Premier Petroleum Co., Ltd., Prudential Trust Corporation, Ltd. (Third Parties), 486
Malham v. McFie, In re Clifford, 53, 54, 660, 661
Malling v. Addison; *In re Baxter's Trusts*, 524
Mallow Urban District Council, Munro v., 334, 335
Malton Gas Co. v. Malton Union Assessment Committee, 514, 516
Manchester and Liverpool District Banking Co., Ex parte; *In re Boulter*, 27
 — *Corporation, McClellan, v.*, 442
 — *Corporation, R. v.*, 146
 — *Corporation, R. v.*; *Ex parte Wiseman*, 626, 627
 — *Ship Canal Co. v. London and North Western Ry. Co.*, 508, 509
Manks v. Whiteley, 431, 432
Maple & Co., Ltd., Bagley v., 267, 268
Maplesons v. Sears, Moss's Empire Garnishees, 98
Marconi and Marconi's Wireless Telegraph Co., Ltd. v. British Radio-Telegraph and Telephone Co., Ltd., 456
Maréchal Suchet, The, 590, 591
Marigold (otherwise Evans) v. Marigold, 269
Marjoram, Stone v., 237
 — *Stowe v.*, 287
Markt & Co., Ltd. v. Knight Steamship Co., Ltd., 486
Marriott, R. v., 105, 106
Marsh, Thomas v.; *In re Palmer*, 343
Marshall v. Spicer, 305
 — *v. "Wild Rose" (Owners)*, 376
Martin, Colville v.; *In re Colville*, 655
 — *Glasgow Parish Council v.*, 285, 292
 — *Hamilton, v.*, 327
 — *Herron v.*, 314, 315
 — *Pratt v.*, 237
 — *R. v.*; *Ex parte Smythe*, 345, 346
 — *Rogers, Eungblut & Co. v.*, 179, 180
Martin v. Smith, 440
 — *v. White*, 609, 610
 — *and Hull Corporation, Smith v.*, 440
 — *and Kingston-upon-Hull Corporation, Smith v.*, 440
Maryon-Wilson's Estate, In re, 636
Masbro Equitable Pioneers Society, Ltd., Lever Brothers, Ltd. v., 624, 625
Mason, R. v., 137
Master's Settlement, In re; *Master v. Master*, 477
Mathie, Hill v.; *In re Whitfield*, 264
Mathieson, Swan & Edgar, Ltd. v., 265, 266
Matlock Bath and Scarthin Nick Urban District Council and Nuttall, Hodge v., 334
Matsuda v. Waldorf Hotel Co., Ltd., 287
Matthews v. Ruggles-Brise, 631, 632
Mawdsley, Wallace v.; *In re Bateman*, 652
Maxwell's Divorce Bill, 273
May v. Beeley, 350, 351
Mead v. Ball, Baker & Co., 61
Meadows, Slee v., 333
Measures Brothers, Ltd. v. Measures, 69, 70
Mechan & Sons, Ltd. v. North-Eastern Ry. Co., 539
Meinall, Green v.; *In re Green*, 174, 265
Menck, National Phonograph Co. of Australia v., 459, 460
Mentors, Ltd. v. White, 110
Merchiston Steamship Co., Ltd. v. Turner, 279
Merrick, In re; *Ex parte Joyce*, 599
Merrifield, Ziegler & Co. v. Liverpool Cotton Association and Hapke & Co., 16, 93, 618
Merry & Cunningham, Ltd., Kane v., 385
Merthyr Tydfil Union, Jones v., 470
Messer, R. v., 134
Meters, Ltd. v. Metropolitan Gas Meters, Ltd., 457
Metropolis and Counties Permanent Investment Building Society, In re; *Gasfield's Case*, 47, 48
Metropolitan District Ry. Co., Ltd. v. Earl's Court, Ltd., 317
 — *Gas Meters, Ltd., Meters, Ltd. v.*, 457
 — *Police Commissioner, R. v.*; *Ex parte Holloway*, 412
 — *Police Commissioner, R. v.*; *Ex parte Humphreys*, 414
 — *Police Commissioner, R. v.*; *Ex parte Pearce*, 413, 414
 — *Police Commissioner, R. v.*; *Ex parte Randall*, 414
 — *Ry. Co. v. London County Council*, 408
 — *Water Board v. Adair and New River Co.*, 418
 — *Water Board, Batt v.*, 417, 418, 441
 — *Water Board v. Bibbey*, 647
 — *Water Board v. Brooks*, 416, 417
 — *Water Board, Colley's Patents, Ltd., v.* 416

- Metropolitan Water Board *v.* Phillips, 417
 — Water Board, Rosenbaum *v.*, 419, 441
 Meyer, N. *re v.*; *In re* Solomon, 635
 Meynall *v.* Morris, 548
 Midland Great Western Ry. of Ireland, Fennah
 — *v.*, 362
 — Ry. Co., Great Central Ry. Co. *v.*, 506,
 507
 — Ry. Co., Great Eastern Ry. Co. and
 Tottenham and Hampstead Joint Com-
 mittee, Port of London Authority *v.*,
 541, 542
 — Ry. Co., Turner *v.*, 89
 Milleh *v.* Colburn, 313, 315, 424
 Miles, Fawke *v.*, 204
 — Ward *v.*, 364
 Millar, Refuge Assurance Co., Ltd. *v.*, 367, 389
 Mills *v.* Johnston; *In re* Johnston, 632, 638
 — *v.* United Counties Bank, Ltd., 431
 — (Victor), Ltd. *v.* Shackleton, 391
 Milner's Safes, Ltd.; Guests Estates, Ltd. *v.*, 184
 Minturn *v.* Barry, 411
 — *v.* London County Council, 411
 Mir Sarwarjam *v.* Fakaruddin Mahomed
 Chowdhry, 173, 174
 Mitcham Common (Conservators) *v.* Cox, 57, 58
 Mitchell, Briggs *v.*, 371
 "Modena," The, 571, 572
 "Modena" (Owners), Chiesman & Co. *v.*;
 "Modena," The, 571, 572
 "Modern Society," Ltd., Damiens *v.*, 489
 Moel Tryvan Shipping Co., Ltd. *v.* Weir (Andrew)
 & Co., 568, 569
 Mole, Tolpitt (H.) & Co., Ltd. *v.*, 107
 Molesworth, Myers *v.*; *In re* Ford, 656
 Monaghan Justices, R. (Regan) *v.*, 348
 Montague *v.* Davies, Benachi & Co., 562, 563
 Montgomery and others (Justices), R. *v.*; *Ex*
parte Long, 346
 Montreal Light, Heat and Power Co. *v.* Sedgwick
 and others, 299
 Moore, Fox *v.*; *In re* Fox, 303
 — Lilley *v.*; *In re* Shuttleworth, 604
 — and Hulme's Contract, *In re*, 432, 433
 Moran *v.* Jones, 138
 — R. *v.*, 124, 125
 Morgan, *Ex parte*; R. *v.* Shoreditch Assessment
 Committee, 513
 — Arnold *v.*, 345, 510, 511
 — *v.* Dixon (William), Ltd., 374, 375
 Morley and Lancelley, London, Gloucestershire,
 and North Hants Dairy Co. *v.*, 411,
 412
 Morris, Meynall *v.*, 548
 Morrison, *Ex parte*; R. *v.* South Shields Licens-
 ing J.J., 302
 — Bank of Scotland *v.*, 247
 — R. *v.*, 116
 — & Mason, Ltd., Rose *v.*, 380
 Mortimer, R. *v.*, 240
 Mosely *v.* Koffyfontein Mines, Ltd., 82
 — Koffyfontein Mines, Ltd. *v.*, 62
 Moses *v.* Raywood, 223, 224
 Moss Steamship Co., Ltd. *v.* Whinney, 579, 580
 Motor Cabs, Ltd., *In re*, 602
 Mount-Edgcumbe (Earl) *v.* Inland Revenue
 Commissioners, 534
 Mowats, Ltd. *v.* Hudson Brothers, Ltd., 314
 "Mudlark," The, 586, 587
 Mulliner (A. G.) Motor Body Co., Jackson *v.*,
 219, 220
 Munich Reinsurance Co., Law Guarantee Trust
 and Accident Society, Ltd. *v.*, 291
 Munro *v.* Didecot, 162, 163
 — *v.* Kelly, 239, 240
 — *v.* Mallow Urban District Council, 334,
 335
 Murphy *v.* R., 340, 341
 Murray *v.* Denholm & Co., 360, 361
 — Walker *v.*, 360
 Myers *v.* Molesworth; *In re* Ford, 656
 Myland, R. *v.*, 122, 134
- N.
- Napier *v.* Williams, 98, 99
 Nash *v.* Layton, 177, 178
 — Pharmaceutical Society *v.*, 405
 Natal Bank, Ltd. *v.* Rood, 163
 National Phonograph Co. of Australia *v.* Menck,
 459, 460
 — Standard Life Assurance Corporation,
 Ltd., *In re*, 82
 — Telephone Co., Dickens *v.*, 615, 616
 — Telephone Co. *v.* Hythe Corporation, 615,
 616
 Naval Colliery Co. (1897), Ltd., Watkins *v.*, 420
 Neale *v.* Beale; *In re* Dering, 654, 655
 — *v.* City of Birmingham Tramways Co., 80,
 81
 Nettlefold, British Association of Glass Bottle
 Manufacturers, Ltd. *v.*, 81, 618
 New Fenix Compagnie Anonyme D'Assurance de
 Madrid *v.* General Accident, Fire and
 Life Assurance Corporation, Ltd., 494,
 495
 New Monckton Collieries, Ltd. *v.* Keeling, 369,
 370
 New Westminster Brewery Co., *In re*, 76
 Newburgh and North Fife Ry. Co., North British
 Ry. Co. *v.*, 18
 Newcastle-upon-Tyne Electric Supply Co., Ltd.
v. Newcastle-upon-Tyne Corporation,
 199
 Newell *v.* MacDevitte, 566
 Newman *v.* Oughton, Pond and Oughton
 (Claimants), 461

Newman, Smith *v.*, 196
 Newquay Urban District Council *v.* Rickeard, 257, 258
 Newson, *Ex parte*; *R. v.* Daly, 180, 181, 347, 348
 Niccolls (W.) & Sons, Ltd., Edge (W.) & Sons, Ltd. *v.*, 459, 624
 Nicholls *v.* White, 537
 Nickson *v.* Dolphin, 186
 Nisbet *v.* Rayne and Burn, 357, 375
 Noden *v.* Galloways, Ltd., 359
 Nore *v.* Meyer; *In re* Solomon, 635
 Norfolk and North American Steam Shipping Co., Virginia Carolina Chemical Co. *v.*, 473
 North British Distillery Co., Ltd. *v.* Edinburgh (Assessor), 517
 — British Ry. Co., Clarke *c.*, 445
 — British Ry. Co. *v.* Newburgh and North Fife Ry. Co., 18
 — British Ry. Co. *v.* Wilson, 46, 47
 — Eastern Ry. Co., Mechan & Sons, Ltd., *v.*, 539
 — Vancouver Land and Improvement Co., Jones *v.*, 69
 Northern Assurance Co., Brice *v.*, 278
 — Counties Institute for the Blind, Macgillivray *v.*, 398, 399
 Northumberland (Duke) *v.* Inland Revenue Commissioners, 533
 — County Council, Carlisle (Earl) (Executrix of) *v.*, 89, 90
 Norton, Forrester *v.*, 337, 338
 — *In re*; Norton *v.* Norton, 464, 465, 476
 Nunburnholme (Lord), *In re*; Wilson *v.* Nunburnholme, 665
 Nunnery Colliery Co., Ltd., Barnes *v.*, 386

O.

Oakley Street & Co., Leach *v.*, 378
 O'Brien *v.* O'Brien, 495
 — *R. v.*, 119, 130, 131, 135, 136
 Ocean Accident and Guarantee Corporation, Ltd. Brice *v.*, 278
 O'Connor *v.* O'Connor, 660
 Oddy, *In re*; 637, 638
 — *In re*; Connell *v.* Oddy, 635, 636, 637
 O'Driscoll *v.* Dolan, 227
 Official Receiver, *Ex parte*; *In re* Biscoe, 31, 32
 — Receiver, *Ex parte*; *In re* Broad, 213
 — Receiver, *Ex parte*; *In re* Lupton, 34, 35
 — Receiver, *Ex parte*; *In re* Pickard, 28
 — Receiver, *Ex parte*; *In re* Rogers, 29, 30
 — Receiver, British Guiana Bank *v.*, 22
 O'Keefe *v.* Edinburgh Lord Provost and Magistrates, 443
 O'Neill, Johnson *v.*, 223
 Orleans Motor Co., Ltd., *In re*, 67, 68

Osborne *v.* Amalgamated Society of Railway Servants, 620, 621
 O'Shea, *In re*; *Ex parte* Lancaster, 32, 33
 Otago Farmers' Co-operative Association of New Zealand, Ltd. *v.* Thompson, 299
 Oughton, Pond and Oughton (Claimants), Newman *c.*, 461
 Outram (George) & Co., Ltd. *v.* London Evening Newspapers Co., Ltd., 497, 498
 Overend, Goldard *v.*; *In re* Faris, 659, 660
 — Goddard *v.*; *In re* Faris (No. 2), 652, 653
 Oxford Canal Navigation, Worcester College, Oxford *c.*, 99, 100

P.

Pacaya Rubber and Produce Co., Ltd., Jones *v.*, 83
 Paddington (Parish) *c.* St. Matthew, Bethnal Green (Parish), 471
 — Borough Council, Campbell *v.*, 449
 — Borough Council *v.* Kensington Royal Borough Council, 415, 416, 418
 Page, Ecclesiastical Commissioners for England *v.*, 304, 305
 Painter, Honor *c.*, 359, 360
 Palace Billiard Rooms, Ltd. and Reduced, Petitioners, 80
 — Theatre, Ltd., Robt *v.*, 103
 Pallin *v.* Buckland, 473
 Palmer, *In re*; Thomas *v.* Marsh, 343
 — *v.* Emerson, 635
 Panagotis *v.* "Pontiac" (Owners), 390
 Pankhurst *v.* Jarvis, 129
 Pantlin *v.* Evans, 520, 521
 Paris *v.* Lymington Rural District Council, 251, 252
 Park *v.* Lawton, 74
 Parken *v.* Gompertz; *In the Estate of Gompertz*, 208
 Parker *v.* Pout, 384
 Parnell *v.* Portsmouth Waterworks Co., 647, 648
 Parrish *v.* Hackney Borough Council, 514
 Parry, Kinahan & Co., Ltd. *v.*, 8
 Part, Wheatley *v.*, 428
 Partridge Jones & Co., Ltd., Plasycod Collieries Co. *v.*, 108
 Pascall & Sons, Roles *v.*, 367
 Patent Caramel Co., Ltd., Gonville's Trustee *v.*, 232, 233
 Paterson, Robson *c.*; *In re* Geikie, 53
 Paton, Crawford (Earl) *v.*, 105
 Patten *v.* Hamilton, 7, 8
 Paul *v.* Piccadilly Hotel, Ltd.; *In re* Piccadilly Hotel, Ltd., 64, 65
 Pavilion, Newcastle-upon-Tyne, Ltd. and Reduced, *In re*, 76, 77

- Pavitt, R. *v.*, 127
 Payne *v.* Grey: *In re* Stamford and Warrington (Earl), 164
 v. Grey: *In re* Stamford and Warrington (Earl) (No. 2), 254
 Peake, *Ex parte*; R. *v.* Davies, 336
 Ex parte; *Curthorn v.*, 560
 Pearce, *Ex parte*; R. *v.* Metropolitan Police Commissioner, 413, 414
 Pears (A. & E.), Ltd. *v.* London County Council, 169, 410
 Penison, Dodd *v.*, 230
 — Dunk *v.*, 109
 v. Webster: *In re* Webster, 53
 Peckham and East Dulwich Tramways Co., *In re*, 487, 488
 Peel's Settlement, *In re*; Biddulph *v.* Peel, 474, 475
 Penarth Pontoon Slipway and Ship-Repairing Co., Ltd., *In re*, 74, 75
 Perry, R. *v.*, 117
 & Co., Ltd. *v.* Hossin (T.) & Co., 625
 Persse, *In re*, 26
 Perth Gas Co. *v.* Perth (City) Corporation, 81
 "Peterston" (Owners), Edmunds *v.*, 381, 382, 391
 Petitioning Creditors, *Ex parte*; *In re* A Debtor, 31, 175, 176
 Pharmaceutical Society *v.* Jacks, 405, 406
 Society *v.* Nash, 105
 Philip *v.* Wilson, 598, 599
 Phillips, Metropolitan Water Board *v.*, 417
 — *v.* Royal London Mutual Insurance Co., Ltd., 291
 — *v.* Vickers, Sons, and Maxim, 392
 — *v.* Williams, 385
 Phoenix Assurance Co., King *v.*, 366
 — Co., Ltd., Ryland's Glass Engineering Co., Ltd. *v.*, 481
 — Veterinary Supplies, Ltd., Hill *v.*, 10
 Picard, Banfield *v.*, 543
 Piccadilly Hotel, Ltd., *In re*; Paul *v.* Piccadilly Hotel, Ltd., 64, 65
 Pickard, *In re*; *Ex parte* Official Receiver, 28
 Pickering *v.* Belfast Corporation, 445, 446
 Pierce *v.* Provident Clothing and Supply Co., Ltd., 388
 Pilcher, Addison *v.*; *In re* Amalgamated Society of Railway Servants (Parliamentary Fund Trusts), 490
 Pilgrim *v.* Simmonds, 612, 613
 Pincus, *In re*, 26
 Pinkey *v.* Cockrell, *In re* Cockrell, 597, 598
 Pintus, Gahula *v.*, 429
 "Pitgavney," The, 584, 585, 588
 Pitman, *In re*; Evans *v.* Rival Granite Quarry — Bank of Ltd., North and South Wales Bank, — R. *v.*, 11
 — Garnishes, 65, 66
 — & Mason, Ewing, 516
 Plaistowe & Co., Warby *v.*, 375
 Plasycod Collieries Co. *v.* Partridge, Jones & Co., Ltd., 108
 Platt, Ranson *v.*, 21
 Plinston, Taylor, Plinston, Brothers & Co., Ltd. *v.*, 96, 490
 Plowden, R. *v.*, 613
 Plymouth Corporation, Hann *v.*, 192
 "Pontiac" (Owners), Panagotis *v.*, 390
 Pontypridd Urban District Council *v.* Jones, 258, 259
 — Urban District Council, Leaver *v.*, 445
 Poole Corporation *v.* Bournemouth Corporation, 282
 Poor Law and Local Government Officers' Mutual Guarantee Association, Ltd., Cosford Union and Hitcham Parish Council *v.*, 290, 471
 Pope *v.* Hill's Plymouth Co., Ltd., 379
 Pope's Contract, *In re*, 550, 636
 — Electric Lamp Co., Ltd., *In re* An Application, 622
 Poplar Union and Keeling, Billericay Rural Council *v.*, 255
 Port Erin Commissioners, Laughton *v.*, 604, 605
 "Port Hunter," The, 589, 590
 Port of London Authority *v.* Midland Ry. Co., Great Eastern Ry. Co., and Tottenham and Hampstead Joint Committee, 511, 512
 Portadown Urban District Council, Shillington *v.*, 54, 55
 Porte *v.* Williams, 151, 152
 Porter, Dando *v.*; *In re* Bladon, 304
 — R. *v.*, 131, 132
 Portsea Steamship Co., Ltd., Thomas (T. W.) & Co., Ltd. *v.*, 571
 Portsmouth Waterworks Co., Parnell *v.*, 647, 648
 Potter *v.* Challans, 12
 Potts *v.* Sanderson, 197
 Poulton & Son *v.* Anglo-American Oil Co., Ltd., 537, 538
 Pout, Parker *v.*, 384
 Powell, Dale *v.*, 452, 453
 — *v.* Dale and Hood, 452, 453
 Powells Tillery Steam Coal Co., Ltd., Hawkins *v.*, 375, 376
 Prance, Sheppard *v.*; *In re* Trinder, 155
 Pratt *v.* Martin, 237
 — and Haynes, Wallis, Son and Wells *v.*, 539, 540
 Premier Petroleum Co., Ltd., Klawanski *v.*; Prudential Trust Corporation, Ltd. (Third Parties), Maisel (Fourth Party), 486
 "President Lincoln," The, 581, 582
 Prested Miners Gas Indicating Electric Lamp Co., Ltd. *v.* Henry Garner, Ltd., 100, 101, 538
 Prestwich, Wood *v.*, 189

- Pretty *v.* Pretty (King's Proctor showing Cause), 272
- Price, Att.-Gen. (Glamorgan County Council) *v.*, 52, 53
- Fairhurst *v.*, 529, 530
- *v.* Price and Brown, 271, 272
- Price's Candle Co., Ltd., London County Council *v.*, 413
- Proctor & Sons *v.* Robinson, 393, 394
- Propert, R. *v.*; *Ex parte* Jones, 513
- Provident Clothing and Supply Co., Ltd., Pierce *v.*, 388
- Province of Ontario, Dominion of Canada *v.*, 168
- Provincial Motor Cab Co. *v.* Dunning, 352, 612
- Union Bank, Rosefield *v.*, 39, 40
- Prudential Trust Corporation, Ltd. (Third Parties), Maisel (Fourth Party); Klawanski *v.* Premier Petroleum Co. Ltd., 486
- Pryce, *In re*; Lawford *v.* Pryce, 94, 95
- Public Trustee, Jevons *v.*; *In re* Jevons, 653, 654
- Trustee Maclaren *v.*; *In re* Robinson, 328, 329
- Trustee, Toovey *v.*; *In re* Deveraux, 638
- Pumpherson Oil Co., Ltd., Conway *v.*, 380, 381
- Punamchand Shrichand & Co. *v.* Temple, 96, 97
- Q.
- Quartermaine *v.* Quartermaine and Glenister, 270
- Quinn, Maguire *v.* 242, 243
- R.
- R. (A Solicitor), *In re*, 597
- *v.* Albutt, 23
- *v.* Allen; *Ex parte* Griffiths, 194
- *v.* Allen; *Ex parte* Hardman, 352, 353
- *v.* Ancaster, 114
- *v.* Ball, 115, 141, 143
- *v.* Banks, 119
- *v.* Bates, 120, 216
- *v.* Beaver and Armstrong, 611, 612
- *v.* Best, 116, 117
- *v.* Bexhill Corporation; *Ex parte* Cornell, 339
- *v.* Birtles, 131
- *v.* Bradford, 139
- *v.* Brixton Prison (Governor); *Ex parte* Savarkar, 217
- *v.* Brixton Prison (Governor); *Ex parte* Thompson, 216, 217
- *v.* Bros; *Ex parte* Hardy, 348
- *v.* Bruce, 139
- *v.* Bundy, 116
- Burrard Power Co., Ltd. *v.*, 163
- *v.* Campbell, 122
- *v.* Canadian Pacific Ry. Co., 163, 164
- *v.* Chapman, 119
- R. *v.* Chitson, 118
- *v.* Conolly and Costello, 132
- *v.* Cooke; *Ex parte* Atherton, 305, 306
- *v.* Cooper, 138
- (Jackson) *v.* Cork County Council, 147
- (Kennedy) *v.* Cork (County) Justices, 348
- (O'Leary) *v.* Cork (County) Justices, 344
- *v.* Costello and Bishop, 132
- *v.* Crane and others, 131
- *v.* Crippen, 115, 116, 121
- *v.* Culliford, 125
- *v.* Daly; *Ex parte* Newson, 180, 181, 347, 348
- *v.* Davidson, 140
- *v.* Davies, 336
- *v.* Davies; *Ex parte* Peake, 336
- *v.* Dickinson; *Ex parte* Davis, 351, 352
- *v.* Dimes, 130
- (Sisk) *v.* Donovan, 336
- *v.* Ellis, 117, 118, 135
- *v.* Ellson, 142
- *v.* Ettridge, 140
- *v.* Everitt, 125, 126
- *v.* Fisher (No. 1), 118
- *v.* Fisher (No. 2), 134
- *v.* Garland and another, 136
- *v.* Garrett-Pegge; *Ex parte* Brown, 349
- *v.* General Income Tax Commissioners for Offlow, 280
- *v.* Gill; *Ex parte* McKim, 613
- *v.* Godinho, 117
- *v.* Godspeed, 128
- *v.* Godstone Rural District Council, 338
- Golden Horseshoe Estates Co. *v.*, 161
- Grand Trunk Pacific Ry. Co. *v.*, 164, 165
- *v.* Halkett; *Ex parte* Butnick, 617
- *v.* Hallett, 114, 115
- *v.* Hay, 114
- *v.* Heard, 126
- *v.* H. M. Prison, Stafford (Governor); *Ex parte* Emery, 119, 120
- *v.* Hertfordshire Justices, 344, 345
- *v.* Hickey, 115
- *v.* Higginson, 138
- *v.* Hill, 142
- *v.* Holden, 133
- *v.* Hopkins; *Ex parte* Lovejoy, 14
- *v.* Hulton; *Ex parte* Hodgson, 337
- *v.* Hutchinson, 133
- *v.* Income Tax Special Commissioners; *Ex parte* Essex Hall, 281
- *v.* Ireland, 142
- *v.* Johnson, 136
- *v.* Jones (No. 1), 125
- *v.* Jones (No. 2), 132
- *v.* Jones (No. 3), 138, 139
- *v.* Keating, 127, 128
- *v.* Larkins, 141
- *v.* Leach, 114

- R. v. Levy, 128
 — v. Lewis, 143
 — v. Liley; *Ex parte* Taylor, 349, 350
 — v. Little and Dunning; *Ex parte* Wise, 347
 — (Cairns) v. Local Government Board (Ireland) and County Tyrone Local Pension Committee, 341
 — v. Locke, 331, 332
 — v. London County Council; *Ex parte* Thornton, 146, 147
 — v. Lovitt, 167
 — v. Machardy, 141, 142
 — v. Mackenzie, 138
 — v. McLauchlan, 238
 — v. McLean, 121
 — v. Manchester Corporation, 146
 — v. Manchester Corporation; *Ex parte* Wiseman, 626, 627
 — v. Marriott, 105, 106
 — v. Martin; *Ex parte* Smythe, 345, 346
 — v. Mason, 137
 — v. Messer, 134
 — v. Metropolitan Police Commissioner; *Ex parte* Holloway, 413
 — v. Metropolitan Police Commissioner; *Ex parte* Humphreys, 414
 — v. Metropolitan Police Commissioner; *Ex parte* Pearce, 413, 414
 — v. Metropolitan Police Commissioner; *Ex parte* Randall, 414
 — (Regan) v. Monaghan Justices, 348
 — v. Montgomery and others, Justices; *Ex parte* Long, 346
 — v. Moran, 124, 125
 — v. Morrison, 116
 — v. Mortimer, 240
 — Murphy v., 340, 341
 — v. Myland, 122, 134
 — v. O'Brien, 119, 130, 131, 135, 136
 — v. Pavitt, 127
 — v. Perry, 117
 — v. Plowden, 613
 — v. Porter, 131, 132
 — v. Propert; *Ex parte* Jones, 513
 — v. Rawson, 351
 — v. Richards, 133, 134
 — v. Richardson and others, Justices; *Ex parte* Sherry, 275
 — v. Ridley, 141
 — v. Rowland, 118, 119, 126, 136
 — v. Rowlands; *Ex parte* Beesley, 335, 336
 — v. Savidge, 142, 143
 — v. Shaw, 137
 — "Pitg." v. Shoreditch Assessment Committee; *Ex parte* Morgan, 513
 — v. Simpson, 139
 — v. Smith, 126, 127, 140, 141
 — v. Johnsons, 133
 — v.
 R. v. South Shields Licensing JJ.; *Ex parte* Morrison, 302
 — v. Spratling, 120, 121
 — v. Studds, 122
 — v. Sunderland Corporation, 336
 — v. Sunderland Corporation; *Ex parte* Crawford, 336
 — v. Syme, 128, 129
 — v. Taylor, 134, 135
 — v. Templer, 395, 396
 — v. Thompson, 117, 347
 — v. Trafford-Lawson and others, Justices, 351
 — v. Turner, 123, 124
 — v. Tynemouth Corporation, *Ex parte* Cowper, 259
 — (Donelly) v. Tyrone (County) Justices, 343, 344
 — v. Waller, 124
 — v. Walton; *Ex parte* Dutton, 191
 — v. Weston, 126, 127
 — v. White, 137
 — v. Wilson, 140, 141
 — Wrigglesworth v., 529
 — v. Yorkshire Justices (West Riding); *Ex parte* Shackleton, 611, 612
 — v. Zausma, 11
 "Ragnhild," The, 582
 Rainger, Corke v., 187
 Ramel Syndicate, Ltd., *In re*, 87, 88
 Ramoneur Co. v. Brixey, 619
 Ramos v. Ramos, 94
 Ramsey & Co., Bradley & Cohn, Ltd. v., 538
 Randall, *Ex parte*; R. v. Metropolitan Police Commissioner, 414
 Ranson v. Platt, 21
 "Raphael" (Owners) v. Brandy, 365
 Raulin v. Fischer, 93
 Rawlings v. Smith; *In re* Surfleet's Estate, 55
 Rawson, R. v., 351
 Rayne and Burn, Nisbet v., 357, 375
 Rayner v. Stepney Corporation, 340
 Raywood, Moses v., 223, 224
 Rea v. Crozier; *In re* Salter, 54
 — v. London County Council, 408
 Red "R" Steamship Co. v. Allatine Brothers and others, 569
 Reddy, Keymer v., 482
 Redfearn, Smith Brothers (Whitehaven), Ltd. v., 103
 Redhill Gas Co. v. Reigate Rural District Council, 257
 Refuge Assurance Co., Ltd. v. Millar, 367, 389
 Registrar of Titles, Spencer v., 149, 150
 Reid v. Swan, 663
 — Walker v., 243
 — Newfoundland Co. v. Anglo-American Telegraph Co., 171

- Reigate Rural District Council, Redhill Gas Co. v., 257
- Reliance Marine Insurance Co. v. Duder, 298
- Renshaw v. Dixon, 205
- Renton, Cromwell v., 610
- M'Lauchlan v., 241, 242
- Retter, Walker v., 180
- Revie v. Cumming, 382, 383
- Reynolds, Att.-Gen. v., 58
- Rhayader Granite Quarries, Ltd., Davies v., 489
- Rheinberg, Green v., 433
- Rice, Board of Education v., 188, 189
- "Swansea Vale" (Owners) v., 377
- Richards, *In re*, 597
- R. v., 133, 134
- v. Starck, 239
- Richardson, *In re*; *Ex parte* St. Thomas's Hospital (Governors), 34
- and others, Justices, R. v.: *Ex parte* Sherry, 275
- Richmond, Foster v., 184
- v. Lambton; *In re* Cadogan's (Earl) Settlements, 475, 476
- Riccard, Newquay Urban District Council v., 257, 258
- Rickman, Cooke v., 203
- Ridley, R. v., 141
- Ridley's Agreement, *In re*; Ridley v. Ridley, 554
- "Rievaulx Abbey," The, 588
- Rigler, Burden v., 255, 256
- Riley v. Holland (W.) & Sons, Ltd., 384
- Ritson v. Dobson, 233, 234
- Rival Granite Quarry Co., Ltd., North and South Wales Bank, Ltd., Garnishes, Evans v., Pitman Claimant, 65, 66
- Roberts v. Fry; *In re* Gardner, 215
- Hincks v.; *In re* Croyden, 329
- Sadler v., 218, 219
- v. Thorp, 655
- Robey, Ginn v., 496
- Robinson, *In re*; Clarkson v. Robinson (No. 1), 426, 427
- *In re*; Clarkson v. Robinson (No. 2), 427
- *In re*; Maclaren v. Public Trustee, 328, 329
- v. Beaconsfield Urban District Council, 438, 439
- Canadian Nothern Ry. Co. v., 164
- Proctor & Sons v., 393, 394
- Rourke v., 434, 435
- Robinson's Settlement, *In re*; Gant v. Hobbs, 559, 560
- Robt v. Palace Theatre, Ltd., 103
- Robson v. Paterson; *In re* Geikie, 53
- Rochford Union (Guardians), Braintree Union (Guardians) v., 472, 473
- Rodger, Lamont v., 225, 228
- Roe, *In re*; Roe v. Squire, 215
- Rogers, *In re*, 29, 30
- *In re*; *Ex parte* Official Receiver, 29, 30
- *In re*; *Ex parte* Sussex (Sheriff), 29, 30
- , Eungblut & Co. v. Martin, 179, 180
- Roles v. Pascall & Sons, 367
- Rood, Natal Bank, Ltd. v., 163
- Rose, *In re*; Sullivan v. Rose, 658, 659
- v. Hyman, 319
- v. Kempthorne, 130
- v. Morrison & Mason, Ltd., 380
- v. Spicer, 319
- Rosefield v. Provincial Union Bank, 39, 40
- Rosenbaum v. Metropolitan Water Board, 440, 441
- Rosie, Mackay v., 372, 373
- Ross v. Eason & Son, Ltd., 483
- Rotax Motor and Cycle Co., Jackson v., 535, 536
- Rotherham Corporation, Willis v., 502, 503
- Rourke v. Robinson, 434, 435
- Rouse v. Ginsberg, 541, 542
- Row v. Jagg; *In re* Hoyles, 55, 92
- v. Jagg; *In re* Hoyles (No. 2), 636
- Rowland, R. v., 118, 119, 126, 136
- Rowlands, Kynoch, Ltd. v., 327, 328
- R. v.; *Ex parte* Beesley, 335, 336
- Rowlett (John) & Co., Vincentelli & Co. v., 297
- Rowley Brothers, Att.-Gen. v., 640, 641
- Royal Albert Hall v. London County Council, 616, 617
- Exchange Assurance, Hutchins Brothers v., 296
- London Mutual Insurance Society, Ltd., McGlade v., 75, 76, 235, 236
- London Mutual Insurance Co., Ltd., Phillips v., 291
- Mail Steam Packet Co., Harding v., 374
- Mail Steam Packet Co., Leach & Co., Ltd. v., 568
- Mail Steamship Co. v. Macintyre Brothers & Co., 568
- Society of Medicine, Hebert v., 494
- Warrant Holders' Association v. Dean (Edward) & Beal, Ltd. 626
- Royce, Ltd., Shaw v., 63, 64
- Ruck v. Ruck and Croft, 273
- Rudd v. Bowles, 314
- v. Skelton Co-operative Society, Ltd., 226
- Ruggles-Brise, Matthews v., 631, 632
- Russell, Falkirk Corporation v., 244
- Russon v. Dutton (No. 1), 308, 333
- v. Dutton (No. 2), 308, 333
- Ryan, *In re*; Ryan v. Ryan, 484, 485
- v. Thomas, 98
- Ryde v. Bristow; *In re* Sheffield (Earl), 654
- Rylands Glass Engineering Co., Ltd. v. Phoenix Co., Ltd., 481
- Ryle v. Ryle; *In re* Bewick, 666, 667

S.

- Saccharin Corporation, *Ld. v. Chemische Fabrik Von Heyden Aktiengesellschaft*, 479, 180
- Sadler *v. Roberts*, 218, 219
— *Whiteman v.*, 126
- St. Matthew, Bethnal Green (Parish), Paddington (Parish) *v.*, 171
- St. Thomas's Hospital (Governors), *Ex parte*;
In re Richardson, 31
- Salaman, *Ex parte*; *In re Magnus*, 33, 34
v. Tol, 35
- Sale & Frazar, *Ld. v. Knight Steamship Co.*,
Ld., 486
- Sales, *In re*; *Sales v. Sales*, 632
- Salt *v. Tomlinson*, 230
- Salter, *In re*; *Rea v. Crozier*, 51
- Salvesen, Halvorsen *v.*, 379
- Samaradiwakara *v. De Saram*, 170
- Sampson, Turner *v.*, 6
- Samuelson (Sir B.) & Co., Howarth *v.*, 390
- Sanders *v. Sanders*, 270
- Sanderson, Douglas *v.*, 197
— *Potts v.*, 197
- Sapcote & Sons *v. Hancox*, 373
- Saqui and Lawrence *v. Stearns*, 289, 290
- Savarkar, *Ex parte*; *R. v. Brixton Prison*
(Governor), 217
- Savidge, *R. v.*, 142, 143
- Scally, Wallace Brothers *v.*, 176
- Scarpetta *v. Lowenfeld*, 93
- Schweder *v. Worthing Gaslight and Coke Co.*,
4
- Scotstoun Estate Co., Jackson *v.*, 374
- Scott *v. Scott*, 96, 273
— *In re*; *Scott v. Scott*, 551
- Scottish North American Trust, *Ld.*, Farmer *v.*,
281
- Scrimgeour *v. Mackinlay*; *In re Mackinlay*, 664
- Seabrook, *In re*; *Gray v. Baddeley*, 474
- "Seacombe," *The*, 581, 586
- Seal, *Ex parte*; *In re Campbell*, 425
— *v. British Orphan Asylum*, 218
- Sealy, *In re*, 600
- Searle *v. Staffordshire County Council* (Clerk),
193, 194
- Sears, Moss's Empires, Garnishees, Mapleson *v.*,
98
- Secombe, Att.-Gen. *v.*, 152, 153
- Secretary of State for India in Council, Ghaswala
v., 173
- Sedgwick and others, Montreal Light, Heat, and
Power Co. *v.*, 299
- "Segura" (Owners) *v. Blampied*, 391
- Seldon *v. Wilde*, 596
- Selig Polyscope Co., Glenville *v.*, 103
- Shackleton, *Ex parte*; *R. v. Yorkshire Justices*
(West Riding), 611, 612
- Shackleton, Mills (Victor), *Ld. v.*, 391
- Shandon Hydropathic Co., *Ld.*, *In re*, 65
- Shannon *v. Banbridge Weaving Co.*, 369
- Sharpe, Cope *v.*, 238, 629
— *v. Durrant*, 183, 184
— *v. Haggith*, 548
- Sharples *v. Eason & Son, Ld.*, 482, 483
- Shaw *v. Crompton*, 327
— *R. v.*, 137
— *v. Royce, Ld.*, 63, 64
- Shaw Stewart, Foote *v.*, 446, 447
- Shears, Bevan *v.*, 190
- Sheffield, British Legal and United Provident
Assurance Co., *Ld. v.*, 467
— (Earl), *In re*; *Ryde v. Bristow*, 654
— *District Ry. Co. v. Great Central Ry.*
Co., 507
- Shepherd *v. Croft*, 543, 561
- Sheppard, *In re*; *de Brimont v. Harvey*, 632,
633
— *v. France*; *In re Trinder*, 155
- Sherry, *Ex parte*; *R. v. Richardson and others*,
Justices, 275
- Sherwin, Bracey *v.*; *In re Charleton*, 664
- Shiers *v. Stevenson*, 190, 191
- Shillington *v. Portadown Urban District Council*,
54, 55
- Shore *v. "Hyrkania" (Owners)*, 392
- Shoreditch Assessment Committee, *R. v.*; *Ex*
parte Morgan, 513
— *Borough Council, London County*
Council v., 513
- Short *v. Hammersmith Corporation*, 253, 254
- Shorter *v. Shorter*, 211
- Shorthouse *v. Annibal*; *In re Boam*, 665, 666
- Shortt *v. Wright*, 198
- Shrimpton *v. Hertfordshire County Council*, 439,
440
- Shuttleworth, *In re*; *Lilley v. Moore*, 604
- Simmonds, Pilgrim *v.*, 612, 613
- Simmons *v. Liberal Opinion, Ld.*; *In re Dunn*,
601
- Simner *v. Watney*, 315
- Simpson, *R. v.*, 139
- Singer Sewing Machine, Co., *Ld.*, McNeice *v.*, 388
- Sirrell *v. Sirrell*, 276, 492
- Sitwell, *In re*, 491
- Skailes *v. Blue Anchor Line, Ld.*, 398
- Skelly *v. Thompson*, 315
- Skelton Co-operative Society, *Ld.*, Rudd *v.*, 226
- Slattery, Bank of Ireland *v.*, 434, 435
- Slee *v. Meadows*, 333
- Sly, Spink & Co., *In re*, 73
- Smith, *In re*; *Ex parte Wilson*, 30, 31
— *v. Cock*, 632
— *v. General Motor Cab Co., Ld.*, 389, 390,
397, 398, 401
— *v. Hull Corporation and Martin*, 440
— *v. Lion Brewery Co., Ld.*, 280, 281, 302

- Smith v. McConnell and Reid, *v.* 16, 17
 — Martin *v.*, 440
 — *v.* Martin and Hull Corporation, 440
 — *v.* Martin and Kingston-upon-Hull Corporation, 440
 — *v.* Newman, 196
 — *R. v.*, 126, 127, 140, 141
 — Rawlings *v.*; *In re* Surfleet's Estate, 55
 — Stead *v.*, 599
 — Brothers (Whitehaven), *Ld. v.* Redfearn, 103
 — (Stephen) & Co., *Ld.*, Coleman & Co., *Ld. v.*; *In re* "Carvino" Trade Mark, 623, 626
 Smyth *v.* Gleeson; *In re* Gleeson, 661
 Smythe, *Ex parte*; *R. v.* Martin, 345, 346
 Société Anonyme de Remorquage à Hélice *v.* Bennetts, 150, 592
 — Coloniale Anversoise *v.* London and Brazilian Bank, 22, 23
 Society of Motor Manufacturers and Traders, *Ld.*, London and North-Western Ry. Co. and other Railway Companies, Members of the Railway Clearing House *v.*, 509
 Solicitor, *In re a*; *Ex parte* Law Society, 603
 Solicitor, *In re a*; *Ex parte* The Law Society (No. 25), 602, 603
 Solomon, *In re*; *Nore v.* Meyer, 635
 — *v.* Attenborough, 214, 461, 462
 Solomons, *R. v.*, 133
 South-Eastern Ry. Co., Jenner *v.*, 444, 445
 — Eastern Ry. Co., London and North-Western Ry. Co. *v.*, 509
 South Hetton Coal Co., Weighill *v.*, 380
 — of England Natural Gas and Petroleum Co., *Ld.*, *In re*, 77, 78
 — Shields Licensing Justices, *R. v.*; *Ex parte* Morrison, 302
 Southern Marine Mutual Insurance Association, *Ld. v.* "Gunford" Ship Co., 295, 296
 Southport and Lytham Tramroads Act, 1900, *In re*; *Ex parte* Hesketh, 627, 628
 Southsea Garage, *Ld.*, *In re*, 86
 Spanish Prospecting Co., *Ld.*, *In re*, 86, 87
 Sparenborg *v.* Edinburgh Life Assurance Co., 291, 292
 Sparkes, *In re*; Kemp-Welch *v.* Kemp-Welch, 662
 Spence, Wills *v.*; *In re* Watkins's Settlement, 550
 Spencer *v.* Registrar of Titles, 149, 150
 — *v.* Turner; *In re* Hudson, 152
 — *v.* Willis; *In re* Willis, 657, 667, 668
 Spicer, Marshall *v.*, 305
 — Rose *v.*, 319
 Spillers & Bakers, *Ld. v.* Great Western Ry. Co. (Association of Private Owners of Railway Rolling Stock, Interveners), 507
 Spillers & Bakers, *Ld.*, Strass *v.*, 299, 300
 Spooner, Wilkes *v.*, 315, 316, 543
 Spratling, *R. v.*, 120, 121
 Spring *v.* Fernandez, 109
 Spurge, *In re*; Culver *v.* Collett, 304
 Squire, Roe *v.*; *In re* Roe, 215
 Stacey *v.* Gas Light and Coke Co. and Metropolitan Water Board, 418
 Staffordshire and Worcestershire Canal Navigation *v.* Bradley, 223
 — County Council (Clerk), Gough *v.*, 193, 194
 — County Council (Clerk), Scarle *v.*, 193, 194
 Stamford and Warrington (Earl), *In re*; Payne *v.* Grey, 464
 — and Warrington (Earl), *In re*; Payne *v.* Grey (No 2), 254
 Stamp Duties Commissioner *v.* Broken Hill South Extended, 160, 164
 — Duties Commissioner *v.* Byrnes, 160
 Standard Colliery Co., Jenkins *v.*, 387, 388
 — Ideal Co. *v.* Standard Sanitary Manufacturing Co., 166, 168, 622, 623
 — Land Co., *Ld.*, Bath *v.*, 68, 69
 — Sanitary Manufacturing Co., Standard Ideal Co. *v.*, 166, 168, 622, 623
 — Trust Co. of New York, Att.-Gen. for Canada *v.*, 70
 Standing Joint Committee of Quarter Sessions and County Council of the County of London *v.* London County Council, 418, 419
 Stansfield & Co. *v.* Andrews, 307, 308
 Starck, Richards *v.*, 239
 Staveley Coal and Iron Co., Walters *v.*, 383, 384
 Stead, *In re*, 599
 — *v.* Aykroyd, 240
 — *v.* Smith, 599
 Stearns, Saqui and Lawrence *v.*, 289, 290
 Steedman, Macalister *v.*, 493
 Steel, McDaid *v.*, 382
 Steele-Morris, Thornhill *v.*, 95
 Stennings, White, Son & Pill *v.*, 110
 Stephen & Sons, *Ld. v.* Allan Line Steamship Co., *Ld.*, 583, 593
 — (Alexander) & Sons, *Ld.*, Carlin *v.*, 396, 397
 Stepney Corporation, Rayner *v.*, 340
 — Spare Motor Wheel Co., *Ld. v.* Hall, 458, 459
 Stevens, Betts *v.*, 609
 — *v.* Insoles, *Ld.*, 368
 Stevenson, Shears *v.*, 190, 191
 — *v.* Stevenson, 271
 Stewart, Corbin *v.*, 405
 — Cummings *v.*, 457
 — *v.* Kilkenny, 496
 — *v.* Williamson, 546
 Stinnes, "Abchurch" Steamship Co. *v.*, 578

- Stirling v. Burdett, 246
 — v. H. M. Advocate, 126, 127
 Stokes, Collman v., 526
 — v. Stokes, 275
 Stone v. Burn, 625, 626
 — v. Marjoram, 237
 Storey, Cloutte v., 202, 476, 477, 636, 637
 Stowe v. Marjoram, 237
 Strachan & Henshaw, Ltd. Bibby & Baron, Ltd.
 v., 458
 Strass v. Spillers & Bakers, Ltd., 299, 300
 Strickland, Derham v., 334
 Strutt v. Clift, 525, 526
 Stuart, Bank of Montreal v., 266
 — and Simpson v. Halstead, 619
 Stubbings v. Clunies-Ross, 210
 Studds, R. v., 122
 Sugden, Leeds Corporation v., 277, 278
 — (T.) & Son, Ltd., *Ex parte*; *In re* Kitson,
 30
 Sullivan v. Rose; *In re* Rose, 658, 659
 — v. Sullivan, 266
 Summerlee Iron Co., Ltd., McGhee v., 396
 Sumner's Settled Estates, *In re*, 555
 Sun Insurance Office, Clark v., 282
 Sunderland, *In re*, 28, 29
 — *In re*: *Ex parte* Leech and Simpkinson,
 28, 29
 Sunderland Corporation, R. v., 336
 — Corporation, R. v.; *Ex parte* Crawford, 336
 Surfleet's Estate, *In re*; Rawlings v. Smith, 55
 Surman v. Biddell; *In re* Behrend's Trust, 35
 Sussex (Sheriff), *Ex parte*; *In re* Rogers, 29, 30
 Sutton Heath and Lea Green Collieries, Ltd.,
 Lunt v., 392
 Swan, Reid v., 663
 — & Edgar, Ltd. v. Mathieson, 265, 266
 "Swanhilda" (Owners), Henriksen v., 373
 "Swansea Vale" (Owners) v. Rice, 377
 Sweeney, Campbell's Trustees v., 641
 Swetman, Dunning v., 240, 241
 Sydney Municipal Council v. Fleay, 159
 Syme, R. v., 128, 129
 Symes, *Ex parte*, 611
 Symington v. Caledonian Ry. Co., 421
 — Caledonian Ry. Co. v., 421
 Symondson (W.) & Co., Glasgow Assurance
 Corporation, Ltd. v., 296
- T.
- Taffs, Halliday v., 565, 566
 Talbot v. Von Boris, 38
 Tamworth Colliery Co., Ltd. v. Hall, 370, 371
 Tarleton v. Hope; *In re* Hope, 556, 557
 Taylor, *Ex parte*; R. v. Lilley, 349, 350
 — *In re*; Taylor v. White, 663
 — v. Dawson (Mark) & Son, Ltd., 220
 — Kish v., 572, 574, 579
 Taylor, R. v., 134, 135
 — v. Western Valleys (Monmouthshire)
 Sewerage Board, 46
 — v. Wilson, 241, 352
 — & Co., Ltd., *Ex parte*: *In re* a Debtor,
 31, 175, 176
 — Plinston Brothers & Co., Ltd. v. Plinston,
 96, 490
 Temple, Hirachand Punamchand v., 96, 97
 — Punamchand Shrichand & Co. v., 96, 97
 Templer, R. v., 395, 396
 Tew v. Briggs; *In re* Charlesworth, 154
 Tewkesbury Gas Co., Ltd., *In re*; Tysoc v. The
 Co., 64
 Thames and Mersey Marine Insurance Co. v.
 "Gunford" Ship Co., 295, 296
 Thomas, *In re*; *Ex parte* Warner, 31
 — *In re*; Bartley v. Thomas, 214, 215, 491
 — Burrows v., 517, 535
 — v. Fairbairne, Lawson & Co., Ltd., 395
 — George v., 349
 — v. Hendon Rural District Council, 260
 — Jenkins v., 355
 — Lambert v., 517, 535
 — v. Marsh; *In re* Palmer, 343
 — Ryan v., 98
 — Wixon v., 517, 535
 — Ltd. v. Houghton, 225
 — (T. W.) & Co., Ltd. v. Portsea Steamship
 Co., Ltd., 571
 Thompson, *Ex parte*; R. v. Brixton Prison
 (Governor), 216, 217
 — v. Equity Fire Insurance Co. and Union
 Bank of Canada, 289
 — Gadd v., 404
 — Haylet v., 667
 — Otago Farmers' Co-operative Association
 of New Zealand, Ltd. v., 299
 — R. v., 117, 347
 — Skelly v., 315
 Thomson v. Flemington Coal Co., Ltd., 385
 Thorman v. Dowgate Steamship Co., Ltd., 576
 Thornhill v. Steele-Morris, 95
 Thornton, *Ex parte*; R. v. London County
 Council, 146, 147
 Thorp, Roberts v., 655
 Thynne, *In re*; Thynne v. Grey, 39, 552
 Ticehurst and District Water and Gas Co., Ltd. v.
 Gas and Waterworks Supply and Con-
 struction Co., Ltd., 648
 Times Cold Storage Co. v. Lowther and Blankley,
 109
 — Cold Storage Co. and New Zealand Ship-
 ping Co., Lowther and Blankley v., 109
 Tingle, Jacobs & Co., Knott v., 365
 "Tintoretto" (Owners), McDermott v., 364, 365
 Titterton v. Kingsbury Collieries, Ltd., 562, 642,
 643
 Tod, Salaman v., 35

Tolputt (H.) & Co., *Ld. v. Mole*, 107
 Tomlin, Greville-Smith *v.*, 337
 Tomlinson, Salt *v.*, 230
 "Tongariro" Cargo (Owners) *v.* "Drumlanrig" (Owners), *The "Drumlanrig,"* 586
 Toovey *v.* Public Trustee; *In re Deveraux*, 638
 Torquay Corporation, Gregory *v.*, 109, 110, 326, 327, 501
 Toscani, *In the Estate of*, 209
 Towndrow, *In re*; Gratton *v.* Machen, 634
 Townsend *v.* Arnold, 306
 Townshend (Marquis), *In re*, 342
 Trafford-Lawson and others, Justices, R. *v.*, 351
 Trainer, Dunning *v.*, 346
 Traynor *v.* Addie (R.) & Sons, 382
 — *v.* Macpherson, 242
 Trevanion, *In re*; Trevanion *v.* Lennox, 520
 Trevener, Cook *v.*, 237
 Trinder, *In re*; Sheppard *v.* Prance, 155
 Trollope, Leicester Guardians *v.*, 43
 Tunnard Brothers, Dennis (W.) & Sons, *Ld. v.*, 404
 Tumin *v.* Levi, 496, 497
 Tunstall Urban District Council, Wolstanton United Urban District Council *v.*, 335
 Turner *v.* Beldam; *In re Beldam's Patent*, 458
 — *v.* Holder, 231
 — London County Council *v.*, 527
 — Merchiston Steamship Co., *Ld. v.*, 279
 — *v.* Midland Ry. Co., 89
 — R. *v.*, 123, 124
 — *v.* Sampson, 6
 — Spencer *v.*; *In re Hudson*, 152
 — *v.* Turner, 212, 213
 — Brightman & Co., Brown *v.*, 567, 568
 Twedde (John) & Co., *In re*, 85
 Tynemouth Corporation, R. *v.*; *Ex parte Cowper*, 259
 Tyrer, Wells *v.*; *In re McMahon*, 668
 Tyrone (County) Justices, R. (Donelly) *v.*, 343, 344
 Tysoe *v.* Tewkesbury Gas Co., *Ld.*; *In re The Co.*, 64

U.

"Umsinga," *The*, 592, 593
 Underground Electric Ry. Co. of London, British Westinghouse Electric and Manufacturing Co. *v.*, 148, 149
 United Counties Bank, *Ld.*, Mills *v.*, 431
 — Mining and Finance Corporation, *Ld. v.* Becher, 604
 — Provident Assurance Co., *In re*, 75
 Uphill *v.* Wright, 99

V.

Vancouver Lumber Co., City of Vancouver *v.*, 167
 Van der Leeuw's Trade Mark, *In re*, 622

Vatcher, Vincent *v.*; *In re Caton*, 497
 Vickers, Fear *v.*, 644
 — Sons, and Maxim, Phillips *v.*, 392
 Victor *v.* Victor, 268, 269
 Victoria Lumber Co., White *v.*, 111
 Vincent *v.* Vatcher; *In re Caton*, 497
 Vincentelli & Co. *v.* Rowlett (John) & Co., 297
 Virginia Carolina Chemical Co. *v.* Norfolk and North American Steam Shipping Co., 573
 Von Boris, Talbot *v.*, 38
 Von Brentano, *In the Estate of*, 210, 211
 Voss and Saunders's Contract, *In re*, 432, 520

W.

"W. H. No. 1" (Owners), "Comet" (Lightship) (Owners) *v.* "W. H. No. 1" and the "Knight Errant," 583, 584
 Waddell & Son, Garrett *v.*, 399
 Waghorne, Griffiths *v.*; *In re Griffiths's Settlement*, 663, 664, 669, 670
 Wake *v.* Dyer, 354, 355
 Wakely and Wheeler, Lurcott *v.*, 317, 318
 Waldorf Hotel Co., *Ld.*, Matsuda *v.*, 287
 Walford, *In re*; Kenyon *v.* Walford, 477, 669
 Walker, Kinnell *v.*, 324, 325, 487
 — Lowery *v.*, 12, 13
 — *v.* Murray, 360
 — *v.* Reid, 242
 — *v.* Retter, 180
 — Trustees, Lord Advocate *v.* 462, 545, 546, 606
 Wall, Lovell & Christmas, *Ld. v.*, 619
 Wallace *v.* Mawdsley; *In re Bateman*, 652
 — Brothers *v.* Scally, 176
 Waller, R. *v.*, 124
 Wallis, Son and Wells *v.* Pratt and Haynes, 539, 540
 Walmsley, *In re*, 556
 Walter's Non-Inflammable Cellolite, *Ld. v. Wenge*; *In re Wenge*, 522
 Walters *v.* Staveley Coal and Iron Co., 383, 384
 Walton, R. *v.*; *Ex parte Dutton*, 191
 Walton-le-dale Urban District Council *v.* Greenwood, 258
 Wandsworth Borough Council *v.* Golds, 414, 415,
 Warby *v.* Plaistowe & Co., 375
 Ward *v.* Miles, 364
 Warner, *Ex parte*; *In re Thomas*, 31
 — *v.* Couchman, 386
 Warrenpoint Urban District Council, Fearon *v.*, 332, 333
 Warrington Corporation, McLoughlin *v.*, 443
 Waters *v.* Lloyd; *In re Lloyd*, 328
 Watkins *v.* Naval Colliery Co. (1897), *Ld.*, 420
 Watkins's Settlement, *In re*; Wills *v.* Spence, 559
 Watkinson *v.* Wilson, 97

- Watling v. Lewis, 156
 Watney, *In re*; Watney v. Gold, 662
 — *Samuel v.*, 315
 Watson (Aurus) & Co.'s Application, *In re*, 490
 — Gow & Co., Ltd., *Barkland v.*, 360
 — (John), Ltd. and others v. Caledonian Ry. Co. and others, 508
 Watt (Andrew) & Sons, International Sponge Importers, Ltd. v., 5, 6
 Wauthier v. Wilson, 246
 Webb v. Baldwin, 251
 Webbe v. Crosse, 436, 437
 Webster, *In re*; Pearson v. Webster, 53
 Wedderburn v. Lauderdale (Earl), 545
 Weighill v. South Hetton Coal Co., 380
 Weiler, Josselson v., 250, 251
 Weir (Andrew) & Co., Moel Tryvan Shipping Co., Ltd. v., 568, 569
 — and Pitt's Contract, *In re*, 153, 154, 530
 Weldon v. Weldon, 667
 Wellington, Whitehead v., 105
 Wells v. Holt; *In re* Lea, 656
 — v. Tyrer; *In re* McMahon, 668
 Wenge, *In re*; Walter's Non-Inflammable Cellulose, Ltd. v. Wenge, 522
 Wentworth Loan and Discount Co. v. Lefkowitz, 427
 Wertheim v. Chicoutimi Pulp Co., 150
 West v. Gwynne, 320, 321
 — v. West, 204
 "West Cock," The, 592
 West Derby Union, Jones (Joseph) & Co. v., 516, 517
 — Ham Corporation, Att.-Gen. v., 330, 331
 — Kent Main Sewerage Board v. Dartford Union Assessment Committee, 518, 519
 — Sussex County Council, Copestake v., 252, 253
 — Yorkshire Darracq Agency, Ltd. v. Cole-ridge, 97
 Western Valleys (Monmouthshire) Sewerage Board, Taylor v., 46
 Weston, R. v., 126, 127
 Weymouth Waterworks Co. v. Coode and Hasell, 646, 647
 Wharwick v. Whitlick; *In re* Whitlick, 666
 Wheatley v. Part, 428
 Whinney, Moss Steamship Co., Ltd. v., 579, 580
 Whitaker, *In re*; Denison-Pender v. Evans, 214
 White, *In re*; Windor v. Jones, 655, 656
 — Barniston v., *In re* Hammond, 657
 — v. Harcourt; *In re* Harcourt's Trusts, 553
 — v. Jeans, 285
 — Martin v., 609, 610
 — Mentors, Ltd. v., 110
 — Nicholls v., 537
 — R. v., 137
 — Taylor v.; *In re* Taylor, 663
 White v. Victoria Lumber Co., 111
 — Young (H.) & Co., Ltd. v., 46
 — (W.) & Sons v. Harris, 393
 — Son & Pill v. Stennings, 110
 Whitehead v. Wellington, 105
 Whitehorn Brothers v. Davison, 422
 Whiteley, *In re*; London (Bishop) v. Whiteley, 657
 — Manks v., 431, 432
 Whiteman v. Director of Public Prosecutions, 427, 428
 — Hall v., 40
 — v. Sadler, 426
 Whitfield, *In re*; Hill v. Mathie, 264
 Whitlick, *In re*; Wharwick v. Whitlick, 666
 Wiener v. Wilsons and Furness-Leyland Line, Ltd., 574
 Wigglesworth v. Wigglesworth, Bennett, Smith and others, 274
 Wilcox, Despard v., 129, 130
 "Wild Rose" (Owners), Marshall v., 376
 Wilde, Seldon v., 596
 Wilkes v. Spooner, 315, 316, 543
 Wilkie v. King, 620
 Wilkinson v. City of Glasgow Friendly Society, 236
 Willcocks, Coaker v., 13, 14, 57
 Williams v. Baker, 231
 — v. Evans, 207, 208
 — v. Giddy, 159, 160
 — v. Jones, 436
 — Napier v., 98, 99
 — Phillips v., 385
 — Porte v., 151, 152
 Williams's Settled Estate, *In re*, 487
 — Settlement, *In re*; Williams v. Williams, 552, 553
 Williamson, Stewart v., 546
 Willis, *In re*; Spencer v. Willis, 657, 667, 668
 — v. Rotherham Corporation, 502, 503
 — Faber & Co., Ltd. v. Joyce, 6, 7
 Willmott v. London Road Car Co., Ltd., 106, 320
 Willoughby, *In re*; Willoughby v. Decies, 661, 662
 — v. Drummond; *In re* Gresley's Settlement, 662, 663
 Wills v. Spence; *In re* Watkins's Settlement, 550
 Wilson, *Ex parte*; *In re* Smith, 30, 31
 — v. Amalgamated Society of Engineers, 620
 — v. Conolly, 238, 239
 — Hosegood & Sons v., 393
 — North British Ry. Co. v., 46, 47
 — v. Nunburnholme; *In re* Nunburnholme (Lord), 665
 — Philip v., 598, 599
 — R. v., 140, 141
 — Taylor v., 241, 352
 — Watkinson v., 97

- Wilson, Wauthier *v.*, 246
 — *v.* Wilson, 213
 Wilsons and Furness-Leyland Line, Ltd., Wiener
 v., 574
 Wilts County Council, Calne Union *v.*, 469, 470
 Windor *v.* Jones; *In re* White, 655, 656
 Winniett, L'Estrange *v.*, 554, 555
 Winters *v.* Addie & Sons' Collieries, Ltd., 399, 400
 Winwick Asylum (Visitors' Committee), Longton
 v., 184, 185
 Wise, *Ex parte*; R. *v.* Little and Dunning, 347
 Wiseman, *Ex parte*; R. *v.* Manchester Corpora-
 tion, 626, 627
 Witkowski, Director of Public Prosecutions *v.*,
 428, 429
 Wixon *v.* Thomas, 517, 535
 Wolstanton United Urban District Council *v.*
 Tunstall Urban District Council, 335
 Wood *v.* Boulcott; *In re* Boulcott's Settlement,
 550, 551
 — *v.* Connolly Brothers, Ltd.; *In re* Connolly
 Brothers, Ltd., 112, 522
 — Deyes *v.*, 78, 79
 — *v.* Prestwich, 189
 Woodbridge & Sons *v.* Bellamy, 600
 Woodford and other Urban District Councils
 Intervening, London County Council
 and Great Eastern Ry. Co., 510
 Woods *v.* Lindsay, 242
 Woodward *v.* Battersea Corporation, 286
 Woolley, *In the Estate of*, 210
 Wootton, Johnson *v.*, 368, 369
 Worcester College, Oxford *v.* Oxford Canal
 Navigation, 99, 100
 Workman, Clark & Co., Ltd., M'Geown *v.*, 393
 Worthing Gaslight and Coke Co., Schweder *v.*,
 244
 Wrigglesworth *v.* R., 529
 — *v.* Wrigglesworth, Bennett, Smith, and
 others, 274
 Wright *v.* Dee Estates, Ltd.; *In re* Dee Estates,
 Ltd., 601, 602
 — *v.* Kerrigan, 389
 — Shortt *v.*, 198
 — Upfill *v.*, 99
 Wrightson, American Surety Company of New
 York *v.*, 290, 291
 Wrottesley's Settlement, *In re*; Wrottesley *v.*
 Fowler, 553, 554
 Wyatt *v.* Att.-Gen. of Quebec, 169
- Y.
- Y., Edinburgh Life Assurance Co. *v.*, 466
 Yap Hon Chin *v.* Jones-Parry, 172
 Yorke, *In re*; Barlow *v.* Yorke, 558
 Yorkshire Justices (West Riding), R. *v.*; *Ex parte*
 Shackleton, 611, 612
 Young, Babcock & Wilcox, Ltd. *v.*, 366
 — *v.* Brownlee & Co., 72
 — & Co. *v.* Liverpool Assessment Committee,
 518
 — (H.) & Co., Ltd. *v.* White, 46
 — Kynance S.S. Co., Ltd. *v.*, 297, 298
- Z.
- Zausma, R. *v.*, 11

BUTTERWORTHS'
Yearly Digest

OF

REPORTED CASES FOR THE YEAR 1911.

ABATEMENT OF LEGACY.

See WILLS.

**ABATEMENT OF NUIS-
ANCE.**

See NUISANCE.

ABSOLUTE GIFT.

See WILLS.

ABSTRACT OF TITLE.

See SALE OF LAND.

ACCEPTANCE.

See BILLS OF EXCHANGE; CONTRACT;
SALE OF GOODS.

ACCESSORIES.

See CRIMINAL LAW AND PROCEDURE.

ACCIDENTS.

See FACTORIES AND WORKSHOPS; IN-
SURANCE; MASTER AND SERVANT;
NEGLIGENCE; NUISANCE; RAIL-
WAYS, ETC.

ACCOMMODATION WORKS.

See RAILWAYS AND CANALS.

ACCOMPLICE.

See CRIMINAL LAW AND PROCEDURE.

**ACCORD AND SATIS-
FACTION.**

See CONTRACT.

**ACCOUNTS AND IN-
QUIRIES.**

See EXECUTORS AND ADMINISTRATORS;
MORTGAGES; PARTNERSHIP; PRAC-
TICE AND PROCEDURE; TRUSTS.

ACCRETION.

See WATERS AND WATERCOURSES.

ACCUMULATIONS.

See PERPETUITIES, No. 1; REAL PRO-
PERTY, No. 1.

ACT OF GOD.

See CONTRACT; NEGLIGENCE; SHIPPING
AND NAVIGATION; STATUTES;
WATERS AND WATERCOURSES.

ACT OF PARLIAMENT.*See* PARLIAMENT; STATUTES.**ACT OF STATE.***See* CONFLICT OF LAWS; PUBLIC AUTHORITIES.**ACTION.**

	COL.
I. ACTIO PERSONALIS, ETC.	3
[No paragraphs in this vol. of the Digest.]	
II. MAINTENANCE AND CHAMPERTY	3
III. GENERAL	3
[No paragraphs in this vol. of the Digest.]	

See CONTRACT, Nos. 7, 8; COPYRIGHT, No. 5; DAMAGES, No. 5; FRIENDLY SOCIETIES, No. 1; NUISANCE, No. 3; PRACTICE, No. 29; TRADE AND TRADE UNIONS, No. 7; WATERS, No. 3.

I. ACTIO PERSONALIS, Etc.

[No paragraphs in this vol. of the Digest.]

II. MAINTENANCE AND CHAMPERTY.*See* SOLICITORS, No. 22.**III. GENERAL.**

[No paragraphs in this vol. of the Digest.]

ACTION IN PERSONAM.*See* ADMIRALTY.**ACTION IN REM.***See* ADMIRALTY.**ADEMPMENT.***See* WILLS.**ADEN.***See* DEPENDENCIES AND COLONIES.**ADJOINING OWNERS.**

See BOUNDARIES AND FENCES; EASEMENTS; HIGHWAYS; METROPOLIS; MINES, MINERALS AND QUARRIES; WATERS AND WATERCOURSES.

ADMINISTRATION OF ASSETS.

See BANKRUPTCY AND INSOLVENCY; COMPANY; EXECUTORS AND ADMINISTRATORS; TRUSTS AND TRUSTEES.

ADMIRALTY JURISDICTION AND PRACTICE.

	COL.
I. HIGH COURT	4
(a) Actions in Personam	4
[No paragraphs in this vol. of the Digest.]	
(b) Actions in Rem	4
(c) Limitation of Liability	4
(d) Salvage Action	4
(e) In General	4
II. COUNTY COURTS	4

See also SHIPPING.**I. HIGH COURT.****(a) Actions in Personam.**

[No paragraphs in this vol. of the Digest.]

(b) Actions in Rem.*See* SHIPPING, No. 52.**(c) Limitation of Liability.***See* SHIPPING, Nos. 47, 48, 49.**(d) Salvage Action.***See* SHIPPING, Nos. 56, 58.**(e) In General.***See* SHIPPING, Nos. 13, 23, 45, 46, 50, 51, 66.**II. COUNTY COURTS.**

1. *Appeal from County Court — Extension of Time for Depositing Security — Mistake of Solicitors — Discretion — County Courts Admiralty Jurisdiction Act, 1868* (31 & 32 Vict. c. 71), ss. 26, 27.]—Under sect. 27 of the County Courts Admiralty Jurisdiction Act, 1868, it is not "sufficient cause" to entitle the Court to allow an appeal to be prosecuted that the appellants' solicitors have, under a mistaken impression that it was unnecessary, omitted to deposit security for the appeal within the proper time.

THE "GRATIA," 28 T. L. R. 49—Div. Ct.

ADMISSIONS.

See CRIMINAL LAW; EVIDENCE; PRACTICE.

ADOPTION.

See INFANTS.

ADULTERATION.

See AGRICULTURE ; FOOD AND DRUGS.

ADULTERY.

See HUSBAND AND WIFE.

AFFIDAVIT.

See EVIDENCE ; PRACTICE.

AFFILIATION.

See BASTARDY.

AGENCY.

	COL.
I. IN GENERAL	5
II. AUTHORITY OF AGENT	5
III. COMMISSION.	
(a) When payable	7
(b) Secret Commissions, etc.	7
IV. LIABILITY OF AGENT	7
V. LIABILITY OF PRINCIPAL	8
VI. POWERS OF ATTORNEY	8
[No paragraphs in this vol. of the Digest.]	
VII. RATIFICATION	8
[No paragraphs in this vol. of the Digest.]	

See also BANKERS, No. 2 ; COMPANIES, No. 16 ; GIFTS, No. 1 ; HUSBAND AND WIFE, No. 6 ; MASTER AND SERVANT, No. 126.

I. IN GENERAL.

1. *Duty of Agent—Communication of Offers to Principal.*—Circumstances in which held that there was no duty on an agent to communicate to his principal an offer which the principal had previously informed him that he would not and could not accept.

BURCHELL v. GOWRIE AND BLOCKHOUSE COL-LIERIES, [1910] A. C. 614 ; 80 L. J. P. C. 41 ; 103 L. T. 325 ; 48 Sc. L. R. 720—P. C.

II. AUTHORITY OF AGENT.

See also No. 8, *infra*.

2. *Sale of Goods—Authority of Agent to Receive Payment in Cash—Directions as to Payment by Crossed Cheque and Form of Receipt.*

—The appellants, sponge importers, employed a traveller to carry with him for sale parcels of sponges. When a bargain was concluded it was the duty of the traveller to forward to the appellants a sale sheet containing particulars of the transaction. The appellants then forwarded to the customer an invoice recording the transaction, which was followed monthly by a statement of account. The statement of account contained three printed notices to customers—first, "Cheques to be crossed"; second, "All cheques to be made payable to International Sponge Importers"; and third, "No receipt valid unless on the firm's printed form to be attached hereto." The respondents had for some years dealt with the appellants on this system. In 1905, 1907, and 1908 the traveller sold three parcels of sponges to the respondents. In the first and second transactions he induced the respondents to pay for the sponges by a cheque payable to him. On the third occasion they paid him £120 in notes and gold. The traveller, who had no actual authority to receive in payment of sponges anything except crossed cheques in favour of the appellants, fraudulently appropriated the amount of the payments made to him by the respondents.

Held—that the payments to the traveller were valid as against the appellants, for the notices in the statements of account did not contain a sufficient intimation to their customers that the traveller was not authorised to receive payment for goods delivered in cash or in a cheque in his favour which could be cashed at once.

Decision of the Ct. of Sess. ([1909] 2 Scots. L. T. 24) affirmed.

INTERNATIONAL SPONGE IMPORTERS, LD. v. [ANDREW WATT & SONS, [1911] A. C. 279 ; 81 L. J. P. C. 12 ; 27 T. L. R. 365 ; 55 Sol. Jo. 422 ; 16 Com. Cas. 224 ; 48 Sc. L. R. 515—H. L. (Sc.)

3. "*Mercantile Agent*"—*Picture Dealer—Sale—Factors Act, 1889* (52 & 53 Vict. c. 45), s. 2.]—Where goods are bought from a person who carries on a business in which there is in the customary course authority to sell—for example the business of a picture dealer—the buyer, provided he acts in good faith and without notice of any limitation of the authority of the person selling, obtains a good title to the goods under sect. 2 of the Factors Act, 1889, notwithstanding that the goods were in fact entrusted to the person selling on the condition that no offer should be accepted until the real owner was referred to or unless a particular price was obtained.

TURNER v. SAMPSON, 27 T. L. R. 200—Chan- [nell, J.

4. *Underwriter—Agent to Sign Policies—Revocation of Agent's Authority—No Notice of Revocation—Holding Out.*—The defendant, an underwriter at Lloyd's, entered into an agreement with one A., by which the latter was to underwrite policies for the defendant for two years up to December 31st, 1909. In pursuance of that agreement, A. underwrote policies for the

11. Authority of Agent—Continued.

defendant. After December 31st, 1909, A. continued to underwrite policies for the defendant, but the latter on being sued for losses thereunder alleged that A.'s authority terminated on December 31st, 1909, and that therefore he was not liable. The defendant gave no notice of the termination of A.'s authority.

Held—that as the defendant had not given notice that he had terminated A.'s authority, he was liable on the policies sued on.

WILLIS, FABER & CO., LD. v. JOYCE, 104 [L. T. 576; 27 T. L. R. 388; 55 Sol. Jo. 443; 16 Com. Cas. 190.—Scrutton, J.

III. COMMISSION.

(a) When payable.

5. *Sale of Property—Agent's Right to Commission—Effective Cause of Sale—Introduction of Purchaser.*—If an agent, employed to effect the sale of a property on commission, introduces a person to his principal as an intending purchaser, and the principal behind the back of the agent, and without his knowledge, sells to the purchaser so introduced to him on terms which the agent had advised his principal not to accept, the agent's act is still the effective cause of the sale, so as to entitle him to commission.

BURCHELL v. GOWRIE AND BLOCKHOUSE COL-
[LIEBIES, [1910] A. C. 614; 80 L. J. P. C.
41; 103 L. T. 325; 48 Sc. L. R. 720—P. C.

6. *Sale of House—Commission—House put into Hands of an Agent—Sale by Owner—Person Willing to Purchase Found by Agent.*—Unless there is a specific agreement to the contrary, the putting of a house into the hands of an agent for sale does not prevent the owner of the house from selling it himself to a person not introduced by the agent, or from selling it through a different agent. Accordingly, where a house is put into the hands of an agent for sale, and the agent finds a person willing to purchase it, but who cannot purchase it because the house has already been sold by the owner, the agent is not entitled to commission.

BRINSON v. DAVIES, 105 L. T. 134; 27 T. L. R.
[412; 55 Sol. Jo. 501—Div. Ct.

(b) Secret Commissions, etc.

See MASTER AND SERVANT, No. 131.

IV. LIABILITY OF AGENT.

7. *Purchase by Agent at an Undervalue of Charge on Principal's Estate—Burden of Proof—Lapse of Time.*—Where an agent purchases at an undervalue a charge on the estate of his principal, and while in receipt of the rents charges his principal with interest on the face value of the charge, the Court, in the absence of evidence that the principal after full disclosure of the circumstances consented to the agent retaining the full benefit of the transaction for his own use, will, in treating him as trustee for his principal, hold that the extra

interest retained should be applied towards the extinguishment of the charge; and lapse of time, even though it may possibly have caused the loss of material evidence, will not shift the burden of proof, originally resting on the agent, to the principal.

PATTEN v. HAMILTON, [1911] 1 I. R. 46—C. A.
[Ireland.

V. LIABILITY OF PRINCIPAL.

See also No. 4, *supra*; INTOXICATING
LIQUORS, No. 15; MARKETS, No. 2.

8. *Limited Authority—Undisclosed Principal—Manager of Public-house—Licence in Name of Manager—Liability of Owner for Spirits ordered by Manager contrary to Instructions.*—The defendants, who were the owners of an hotel, put in a manager, whose name appeared over the premises as licensee. He was instructed to order spirits from a particular firm only, but in breach of such instructions he ordered whisky from the plaintiffs, who knew that the licence was taken out in his name and knew nothing of the defendants. Subsequently, on discovering that the defendants were the real owners of the hotel, the plaintiffs brought an action against them for the price of the whisky supplied. At the trial no evidence was given as to whether the whisky was ordered or used for the purposes of the hotel.

Held—that judgment must be entered for the defendants on the ground that there was no evidence that the whisky had been ordered by the manager as the defendants' agent or had been used for the purposes of the hotel.

Decision of Div. Ct. ([1910] 2 K. B. 389; 102 L. T. 826) reversed.

KINAHAN & CO., LD. v. PARRY, [1911] 1 K. B.
[459; 80 L. J. K. B. 276; 103 L. T. 867—
C. A.

VI. POWERS OF ATTORNEY.

[No paragraphs in this vol. of the Digest.]

VII. RATIFICATION.

[No paragraphs in this vol. of the Digest.]

AGREEMENT.

See CONTRACT; LANDLORD AND TEN-
ANT, ETC.

AGRICULTURE.

	COL.
I. AGRICULTURAL HOLDINGS . . .	8
II. CUSTOM OF THE COUNTRY . . .	9
[No paragraphs in this vol. of the Digest.]	
III. FERTILIZERS AND FEEDING STUFFS . . .	10
IV. MARKET GARDENS . . .	10

I. AGRICULTURAL HOLDINGS.

See also SCOTTISH LAW, No. 3.

1. *Vendor and Purchaser—Conditions of Sale—Terms of Existing Tenancy—Compensation for*

I. AGRICULTURAL HOLDINGS—Continued.

Improvements—Notice—Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 2.] A purchaser is deemed to have notice of a tenant's claim to compensation for improvements under the Agricultural Holdings Act, 1908.

IN RE LORD DERBY'S CONTRACT, FERGUSON v. [DERBY, 56 Sol. Jo. 71—Joyce, J.]

See S. C. SALE OF LAND, No. 1.

2. *Compensation for Improvements—Time for Making Claim—Lease—Eligal Condition—Agricultural Holdings (Scotland) Act, 1883* (46 & 47 Vict. c. 62), s. 36—*Agricultural Holdings Act, 1900* (63 & 64 Vict. c. 50), s. 2 (2).]—The lease of a farm prescribed compensation for improvements to be paid in lieu of the compensation provided by the Agricultural Holdings Act, 1900, sect. 1, and relative schedule (which superseded sect. 1 and relative schedule of the Agricultural Holdings (Scotland) Act, 1883). The lease also contained a proviso that no claim for compensation should be made by the tenant later than one month prior to the determination of the tenancy. The tenant having given notice in terms of the lease of his intention to terminate the tenancy, quitted the farm accordingly. He made claims for compensation, which but for the proviso would have been made in time, less than one month prior to the determination of the tenancy. The landlord resisted the claims in respect that they were not made in time.

HELD—that the stipulation contained in the lease as to the time of making the claim was void under sect. 36 of the Agricultural Holdings (Scotland) Act, 1883, inasmuch as it might (at least indirectly) operate to deprive the tenant of his right to obtain any compensation at all.

Decision of Ct. of Sess. ([1911] S. C. 292; 48 Sc. L. R. 207) affirmed.

CATHCART v. CHALMERS, [1911] A. C. 246; 80 [L. J. P. C. 143; 104 L. T. 355; 48 Sc. L. R. 457—H. L. (Sc.).]

3. *Tenant Bound by Lease to Apply Artificial Manure—Outgoing—Compensation for Unexhausted Value—Improvements—Agricultural Holdings (Scotland) Act, 1908* (8 Edw. 7, c. 64), s. 1, Sched. I., Pt. 3.]—A lease contained provisions which required the tenant to manure the land with a certain amount of farmyard manure per acre, and so far as he did not make on the farm sufficient farmyard manure to apply artificial manure.

HELD—that the application of the artificial manure was an "improvement" within sect. 1, sub-sect. 2 (a), of the Agricultural Holdings (Scotland) Act, 1908, and that it could not be assumed that the landlord in fixing the rent had given "any benefit" in consideration of this improvement, and that the tenant was entitled at his outgoing to claim compensation for the unexhausted value of the artificial manures which he had applied.

M'QUATER v. FERGUSON, [1911] S. C. 640; [48 Sc. L. R. 560—Ct. of Sess.]

III. FERTILISERS AND FEEDING STUFFS.

4. *Adulteration—Invoice—Failure to deliver—Sale in England—Purchaser in Ireland—Prosecution in England—Consent of Board of Agriculture and Fisheries—Fertilisers and Feeding Stuffs Act, 1906* (6 Edw. 7, c. 27), ss. 6, 12.]—By sect. 6 of the Fertilisers and Feeding Stuffs Act, 1906, a prosecution for failure to deliver an invoice to the purchaser shall not be instituted except with the consent of the Board of Agriculture and Fisheries, and by sect. 12, for the purposes of the execution of the Act in Ireland, the Department of Agriculture and Technical Instruction for Ireland is substituted for the Board of Agriculture and Fisheries.

The appellant, on behalf of the Department of Agriculture and Technical Instruction for Ireland, laid an information against the respondents before a magistrate in Birmingham for failure to deliver an invoice of calf meal sold by them in Birmingham to a purchaser in Ireland. The consent of the Board of Agriculture and Fisheries to the institution of proceedings had not been obtained.

HELD—that the consent of the Board of Agriculture and Fisheries was necessary to such a prosecution in England.

HILL v. PHOENIX VETERINARY SUPPLIES, LD., [1911] 2 K. B. 217; 80 L. J. K. B. 669; 105 L. T. 73; 75 J. P. 321; 9 L. G. R. 731—Div. Ct.

IV. MARKET GARDENS.

5. *Compensation for Improvements—"Contract of Tenancy Current at the Commencement of the Act"—Tenancy from Year to Year—Market Gardeners' Compensation Act, 1895* (58 & 59 Vict. c. 27), ss. 1, 3, 4—*Agricultural Holdings (England) Act, 1883* (46 & 47 Vict. c. 61), s. 61—*Agricultural Holdings Act, 1908* (8 Edw. 7, c. 28), s. 42 (2).]—By virtue of sect. 61 of the Agricultural Holdings (England) Act, 1883, of which Act the Market Gardeners' Compensation Act, 1895, is to be read as part, a tenancy from year to year under a contract of tenancy current at the commencement of the last-mentioned Act must for the purposes of that Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of the Act until the first day on which it could be determined by notice to quit given immediately after the commencement of the Act, and thereafter be deemed to be a tenancy under a contract of tenancy beginning after the commencement of the Act.

IN RE KEDWELL AND FLINT & CO., [1911] [1 K. B. 707; 80 L. J. K. B. 707; 104 L. T. 151; 55 Sol. Jo. 311—C. A.]

AIR.

See EASEMENTS.

ALE AND BEER.

See INTOXICATING LIQUORS.

II. CUSTOM OF THE COUNTRY.

[No paragraphs in this vol. of the Digest.]

ALIENATION, RESTRAINTS ON. ANCIENT LIGHTS.

See PERPETUITIES; SETTLEMENTS;
TRUSTS.

ALIENS.

I. RIGHT TO SUE	COLL. 11
{No paragraphs in this vol. of the Digest.}	
II. EXPULSION ORDER	11
III. IN GENERAL	11
{No paragraphs in this vol. of the Digest.}	

I. RIGHT TO SUE.

{No paragraphs in this vol. of the Digest.}

II. EXPULSION ORDER.

1. *Recommendation for Deportation at Expiration of Sentence—Appeal—Part of Sentence—Aliens Act, 1905 (5 Edw. 7, c. 13), s. 3 (1).*—*Semble*, a recommendation to the Home Secretary under sect. 3, sub-sect. 1, of the Aliens Act, 1905, for the expulsion of a convicted alien on the expiration of his sentence forms part of the sentence and may be appealed against and quashed.

R. v. ZAUSMA, 75 J. P. N. 532—C. C. A.

III. IN GENERAL.

{No paragraphs in this vol. of the Digest.}

ALIMONY.

See HUSBAND AND WIFE.

ALLOTMENTS.

See COMPULSORY PURCHASE, No. 2;
SMALL HOLDINGS AND ALLOT-
MENTS.

ALLUVION.

See WATERS AND WATERCOURSES, No. 9.

ALTERATION OF DOCUMENTS.

See BANKERS AND BANKING; BILLS
OF EXCHANGE; DEEDS AND
OTHER DOCUMENTS; WILLS.

AMUSEMENTS.

See THEATRES, ETC.

See EASEMENTS.

ANIMALS.

I. CRUELTY TO ANIMALS	COLL. 12
II. DISEASES OF ANIMALS	12
{No paragraphs in this vol. of the Digest.}	
III. DOGS	12
{No paragraphs in this vol. of the Digest.}	
IV. LIABILITY FOR INJURY BY	12
V. WILD BIRDS PROTECTION	14

See also COMMONS, No. 1.

I. CRUELTY TO ANIMALS.

See also MAGISTRATES, No. 19.

1. *Sheep—Sufficiency of Evidence—Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 2.*—The respondent, who was a farmer, was summoned for cruelty to a sheep, and evidence was given by a shepherd that the sheep in question died from exhaustion through its being eaten by maggots; that it must have suffered great pain; and that he saw no signs of the wounds having been dressed. Evidence was also given that the respondent had stated that he knew that some of his sheep were affected with fly, and on one occasion he had sent a man to dress the wounds. The justices dismissed the summons on the ground that there was not sufficient evidence.

HELD—that it was open to the justices to arrive at this decision.

POTTER v. CHALLANS, 102 L. T. 325; 74 J. P. [114; 22 Cox, C. C. 302—Div. Ct.

II. DISEASES OF ANIMALS.

{No paragraphs in this vol. of the Digest.}

III. DOGS.

{No paragraphs in this vol. of the Digest.}

IV. LIABILITY FOR INJURY BY.

2. *Savage Horse—Liability of Owner for Injury to Person Crossing Field—Field Habitually Used by Public as a Short Cut—Knowledge of Owner.*—The appellant, while passing through a field belonging to the respondent, was attacked and injured by a horse belonging to the respondent. The respondent knew that the field was habitually used by the public as a short cut, and that the horse which he had put there was ferocious. In an action by the appellant to recover damages from the respondent in respect of his injuries:

HELD—that the respondent owed a duty to the public crossing the field to give notice of probable danger from the horse, and that as he had failed to give such notice he was liable for the injuries caused to the appellant.

IV. Liability for Injury by—Continued.

Decision of C. A. ([1910] 1 K. B. 173; 79 L. J. K. B. 297; 101 L. T. 873; 26 T. L. R. 108; 54 Sol. Jo. 99) reversed.

LOWERY v. WALKER, [1911] A. C. 10; 80 L. J. [K. B. 138; 103 L. T. 674; 27 T. L. R. 83; 55 Sol. Jo. 62; 48 Sc. L. R. 726—H. L.

3. *Cattle Straying—Injury to Person Using Highway.*—Observations as to the obligation on the part of owners of cattle pastured in a field adjoining a highway as to preventing them straying on to the highway.

ELLIS v. BANYARD, 28 T. L. R. 122; 56 Sol. [Jo. 139—C. A.

See S. C. under NEGLIGENCE, VIII.

4. *Horse Straying on Highway—Defective Hedge—Negligence—Damage to Cyclists.*—A young horse, which the defendant had placed in a field, escaped on to the highway owing to a defective hedge. The plaintiffs, who were riding a tandem bicycle along the highway, on seeing the horse slowed down, but the horse turned round suddenly and ran across the road, coming into contact with the bicycle. The horse fell down, and then jumping up lashed out and injured the bicycle and one of the plaintiffs. In an action by the plaintiffs claiming damages from the defendant, the county court judge found that there was no evidence that the horse was vicious, or in the habit of trespassing or attacking bicyclists or anyone else on the high road. He also found that the defendant was guilty of negligence in turning the horse into a field of which the hedges were defective, but that as the act of the horse was not one which it was in the ordinary nature of a horse to commit, the defendant was not liable.

HELD—that as the injury to the plaintiffs was not the natural consequence of the defendant's negligence, the plaintiffs were not entitled to recover.

Per BANKES, J.—At common law there is no duty on the owner or occupier of a field adjoining a highway, as regards passers-by on the highway, to keep his quiet domestic animals, not known by him to be vicious, off the highway, or to fence his land so as to prevent them from escaping. Accordingly, where one escapes owing to defective hedges, and does injury to passers-by, they have no action against the owner of the animal.

JONES v. LEE, 28 T. L. R. 92; 56 Sol. Jo. 125 [—Div. Ct.

5. *Distress Damage Feasant—Imponounding—Pound more than Three Miles from Place of Seizure*—1 & 2 Ph. & Mar. c. 12, s. 1.]—Under the provisions of the statute 1 & 2 Ph. & Mar. c. 12, animals taken damage feasant may be driven to a pound anywhere within the hundred, rape, wapentake or lathe, however far the pound may be from the place where they were taken; or they may be driven to a pound outside the hundred, rape, wapentake, or lathe, provided it is not more than three miles from the place where they were taken.

Opinion of the Serjeants in *Berdsey v. Pilkington* ((1588) Gouldsborough, 100) affirmed.

Decision of Div. Ct. ([1911] 1 K. B. 649; 103 L. T. 806; 27 T. L. R. 137; 55 Sol. Jo. 155) affirmed.

COAKER v. WILLCOCKS, [1911] 2 K. B. 124; [80 L. J. K. B. 1026; 104 L. T. 769; 27 T. L. R. 357—C. A.

See S. C. COMMONS, No. 1.

V. WILD BIRDS PROTECTION.

6. *Unlawful Possession—Recently Taken—Question of Fact—Wild Birds Protection Act, 1880* (43 & 44 Vict. c. 35), s. 3—*Wild Birds Protection Act, 1896* (59 & 60 Vict. c. 56), s. 1.]—A defendant was summoned for unlawfully having in his possession in the county of London wild birds recently taken, contrary to sect. 3 of the Wild Birds Protection Act, 1880, as extended by subsequent statutory orders. The birds were caught on September 2nd or 3rd, and came into the defendant's possession on October 22nd. The magistrate held that on October 22nd they were not recently taken, and he dismissed the summons.

HELD—that the question whether the birds were recently taken was a question of fact for the magistrate.

R. v. HOPKINS, EX PARTE LOVEJOY, 104 L. T. [917; 75 J. P. 340—Div. Ct.

ANNUITIES.

See INCOME TAX, No. 15; RENT-CHARGES AND ANNUITIES, No. 2; SETTLEMENTS, Nos. 3, 4; TRUSTS; WILLS.

ANTICIPATION, RESTRAINT ON.

See HUSBAND AND WIFE; PERPETUITIES; PERSONAL PROPERTY; TRUSTS.

APOTHECARIES.

See MEDICINE AND PHARMACY.

APPEAL.

See BANKRUPTCY; COUNTY COURTS; COURTS; CRIMINAL LAW AND PROCEDURE; DEPENDENCIES AND COLONIES; MAGISTRATES; PRACTICE AND PROCEDURE, ETC.

APPOINTMENT, POWERS OF.

See POWERS.

APPORTIONMENT.

See LANDLORD AND TENANT; REAL PROPERTY AND CHATTELS REAL; RENT-CHARGES AND ANNUITIES; WILLS, No. 17.

APPRAISERS.

See VALUERS AND APPRAISERS.

APPRENTICES.

See INFANTS; MASTER AND SERVANT.

APPROPRIATION OF PAYMENTS.

See BANKERS AND BANKING, I.; MONEY AND MONEY-LENDERS, IV.

ARBITRATION.

	COL.
I. ARBITRATORS AND UMPIRES	15
II. AWARD	16
III. COSTS	16
[No paragraphs in this vol. of the Digest.]	
IV. SPECIAL CASE	16
[No paragraphs in this vol. of the Digest.]	
V. SUBMISSION TO ARBITRATION.	
(a) General	16
(b) Stay of Proceedings	17
(c) Revocation	18
[No paragraphs in this vol. of the Digest.]	

See also AGRICULTURE; BUILDING CONTRACTS, Nos. 5, 7; COMPULSORY PURCHASE; MASTER AND SERVANT, No. 23; SOLICITORS, No. 19.

I. ARBITRATORS AND UMPIRES.

1. *Jurisdiction—Points of Claim and Defence Delivered—New Ground of Defence put Forward—Jurisdiction of Arbitrator to allow Amendment.*—Matters of difference having arisen between the insured and the insurance company under a policy of insurance, the parties agreed

to refer all matters of difference under the policy to the award of an arbitrator. The arbitrator directed points of claim and of defence to be delivered, and these were delivered accordingly. Upon the matter coming before the arbitrator the insurance company at once intimated that they desired to amend their points of defence by adding thereto a new ground of defence to the claim based upon a condition in the policy, and they contended that the arbitrator was bound to allow this new ground of defence to be added, and had no discretion to refuse to allow it.

HELD—that the points of claim and defence, being in the nature of pleadings, could be amended by the arbitrator at his discretion; and that after the parties had submitted their points of claim and defence the arbitrator was not bound to admit any new ground of defence, but had a discretion, to be exercised judicially, either to allow or to refuse to allow the new ground of defence to be added.

Edward Lloyd, Ltd. v. Sturgeon Falls Pulp Co., Ltd. ((1901) 85 L. T. 162) followed.

IN RE ARBITRATION BETWEEN CRIGHTON AND [LAW CAR AND GENERAL INSURANCE CORPORATION, LD., [1910] 2 K. B. 738; 80 L. J. K. B. 49; 103 L. T. 62—Div. Ct.]

II. AWARD.

2. *Foreign Arbitration—Germany—Enforcement of Award.*—An award in a German arbitration, which requires an “enforcement order” to be enforceable in Germany, is not a decision which the Court ought to recognise as a foreign judgment, and therefore cannot be enforced by action in England.

MERRIFIELD ZIEGLER & CO. v. LIVERPOOL [COTTON ASSOCIATION AND HAPKE & CO., [1911] W. N. 138; 105 L. T. 97; 55 Sol. Jo. 581—Eve, J.]

III. COSTS.

[No paragraphs in this vol. of the Digest.]

IV. SPECIAL CASE.

[No paragraphs in this vol. of the Digest.]

V. SUBMISSION TO ARBITRATION.

See also SCOTTISH LAW, No. 3.

(a) General.

3. *Sale of Goods—Trade Association—Rules—Non-Member—Condition Referring Disputes to Arbitration—Reasonable Notice of Condition.*—

A member of the Glasgow Flour Trade Association sold flour to a purchaser (who was not a member), the terms of the contract being contained in sale-notes delivered to and accepted by the purchaser. Each sale-note contained on the margin these words: “Any dispute under this contract to be settled according to the rules of the Glasgow Flour Trade Association.” One of these rules provided that all disputes should be referred to arbitration. No copy of the rules was sent to the purchaser, and it did not appear that he was aware of their terms.

HELD—that the purchaser had not received reasonable notice of the condition referring

V. Submission to Arbitration—Continued.

disputes to arbitration, and accordingly that he was not bound by that condition.

M'CONNELL AND REID *v.* SMITH [1911] S. C. [635; 48 Sc. L. R. 564—Ct. of Sess.]

(b) Stay of Proceedings.

See also SHIPPING, Nos. 13, 21.

4. *Local Authority—Contract for Works—Action on the Contract—Staying Proceedings—Reference of Dispute to Officer of Local Authority—Charge of Unreasonable Conduct Against Arbitrator—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*—Where works are constructed for a local authority under a contract which provides for the reference of disputes thereunder to an officer of the local authority, and the contractor sues the local authority on the contract, the Court will not order the action to be stayed on the submission to arbitration, where the contractor charges the arbitrator with unreasonable conduct in relation to the works, and it appears that there is a substantial dispute between the parties as to the conduct of the arbitrator.

Decision of Bucknill, J., reversed.

R. W. BLACKWELL & Co., LD. *v.* DERBY CORPORATION, 75 J. P. 129—C. A.

5. *Local Authority—Contract for Works—Action by Contractor—Reference of Disputes to Officer of Local Authority—Staying Proceedings—Attack on Conduct of Arbitrator—Discretion of Court—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*—Where a contractor brought an action to recover the price of certain works constructed for a local authority under a contract which provided for the reference of disputes thereunder to the engineer of the local authority, and, in answer to a summons to stay proceedings under sect. 4 of the Arbitration Act, 1889, challenged the conduct of the engineer in relation to the works, the question in dispute being whether the engineer had not precluded himself by his own admissions from asserting that the works had not been completed to his satisfaction, and that the period of maintenance had not expired:—

HELD—that an order to stay proceedings should be refused; *per* Cozens-Hardy, M.R., on the ground that the cross-examination of the engineer was essential to the proper determination of the dispute; *per* Buckley, L.J., on the ground that, though in his opinion the evidence failed to show that the engineer had unfitted himself to act as arbitrator, yet the fact that one judge of the Court of Appeal was not "satisfied that there was no sufficient reason why the matter should not be referred" was a ground upon which another judge of coordinate jurisdiction could concur in the view that an absence of a sufficient reason was not shown.

Decision of Lush, J., affirmed.

G. FREEMAN & SONS *v.* CHESTER RURAL DISTRICT COUNCIL, [1911] 1 K. B. 783; 80 L. J. K. B. 695; 104 L. T. 368; 75 J. P. 132—C. A.

6. *Railway—Contract—General Arbitration Clause—Jurisdiction of Court.*—A railway company entered into an agreement with another railway company to work and maintain a line of railway which the second company undertook to construct. In terms of the agreement the first company came under an obligation to pay the second company such a sum as would be sufficient to make up the annual dividend to 4 per cent, on the "paid-up share capital" of the second company. The agreement contained this clause—"All questions which may arise between the parties hereto in relation to this agreement, or to the import or meaning thereof, or to the carrying out of the same, shall be referred to arbitration. . . ." A question having arisen as to whether the *ex facie* paid-up share capital of the second company, looking to the mode in which it had been created, which was said to have been *ultra vires*, was truly "paid-up share capital" in the sense of the agreement.

HELD—that the question was a pure question of construction under the contract, and that although it was a question of law it fell under the arbitration clause.

NORTH BRITISH RY. CO. *v.* NEWBURGH AND [NORTH FIFE RY. CO., [1911] S. C. 710; 48 Sc. L. R. 450—Ct. of Sess.]

(c) Revocation.

[No paragraphs in this vol. of the Digest.]

ARCHITECT.

See BUILDING CONTRACTS, ETC.

ARMORIAL BEARINGS.

See REVENUE; WILLS.

ARMY.

See ROYAL FORCES.

ARRANGEMENT WITH CREDITORS.

See BANKRUPTCY AND INSOLVENCY.

ARTICLED CLERK.

See SOLICITOR.

ARTICLES OF ASSOCIATION.

See COMPANIES.

ARTISANS' DWELLINGS.

See PUBLIC HEALTH.

ASSAY.

See REVENUE, No. 6.

ASSESSMENT.

See RATES AND RATING.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

See BANKRUPTCY AND INSOLVENCY.

ASSIGNMENT OF DEBT.

See CHOSES IN ACTION.

ASSOCIATIONS.

See BUILDING SOCIETIES; CLUBS; COMPANIES; FRIENDLY SOCIETIES; INDUSTRIAL SOCIETIES; TRADE AND TRADE UNIONS.

ASYLUMS.

See CHARITIES; LOCAL GOVERNMENT; LUNATICS; POOR LAW; PUBLIC HEALTH.

ATTACHMENT OF DEBTS.

See BANKRUPTCY; COUNTY COURTS; EXECUTION; PRACTICE, XIV.

ATTACHMENT OF PERSON.

See CONTEMPT AND ATTACHMENT.

ATTORNEY.

See SOLICITORS. FOR POWER OF ATTORNEY, *see* AGENCY.

AUCTIONS AND AUCTIONEERS.

I. AUCTIONS.

[No paragraphs in this vol. of the Digest.]

II. AUCTIONEERS.

(a) Liability.

[No paragraphs in this vol. of the Digest.]

(b) Generally.

[No paragraphs in this vol. of the Digest.]

AUDITORS.

See COMPANIES, No. 1; TRUSTS, No. 16.

AUSTRALIA.

See DEPENDENCIES AND COLONIES.

AVERAGE.

See SHIPPING AND NAVIGATION.

BAIL.

See CRIMINAL LAW, No. 57.

BAILEE, LARCENY BY.

See CRIMINAL LAW.

BAILIFF.

See SHERIFFS AND BAILIFFS; COUNTY COURTS; EXECUTION; INTERPLEADER.

BAILMENT.

I. HIRE PURCHASE AGREEMENTS COL.
20
[No paragraphs in this vol. of the Digest.]

II. LIABILITY OF BAILEE 21

III. LIABILITY OF BAILOR 21
[No paragraphs in this vol. of the Digest.]

IV. GENERALLY 21
[No paragraphs in this vol. of the Digest.]

See also MASTER AND SERVANT, No. 126.

I. HIRE PURCHASE AGREEMENTS.

[No paragraphs in this vol. of the Digest.]

II. LIABILITY OF BAILEE.

1. *Warehouseman — Negligence — Claim by Third Party to Goods Bailed — Duty of Bailee — Notice of Claim to Bailor — Order by Magistrate that Goods be Delivered to Third Party — Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 40.*—The plaintiff, a married woman, living apart from her husband, deposited certain goods belonging to her with the defendant, a warehouseman, the charge to be made by the defendant for the storage of the goods having been agreed upon between the plaintiff and the defendant. The plaintiff gave her address to the defendant. The plaintiff's husband subsequently went to the defendant's premises and claimed to be the owner of the goods, and, upon the defendant refusing to deliver them to him except under a magistrate's order, the husband and a representative of the defendant attended before a magistrate. The defendant's representative informed the magistrate that the goods had been deposited with the defendant by the plaintiff and that therefore the defendant for his protection required an order of the magistrate that he should deliver the goods to the husband. Thereupon a summons was issued by the magistrate under sect. 40 of the Metropolitan Police Courts Act, 1839, against the defendant. The defendant did not give notice to the plaintiff that the husband claimed the goods. At the hearing of the summons the husband deposed that he was the owner of the goods and that they were worth £10, and the magistrate thereupon made an order that the defendant should deliver the goods to the husband. The defendant accordingly delivered the goods to the husband. The plaintiff subsequently brought an action in the county court claiming from the defendant the return of the goods or their value and damages for their detention, and the county court judge directed the jury that the defendant would be responsible for the loss of the goods if he by his negligence allowed the magistrate's order to be made without giving notice to the plaintiff, whose address he knew, of her husband's claim to the goods or asking the magistrate to summon the plaintiff before him so that she might be heard. The jury found that there was negligence on the part of the defendant.

HELD—that there had been a failure on the part of the defendant to fulfil his obligations as a bailee, and that he could not rely for protection upon the order made by the magistrate, and that therefore the plaintiff was entitled to judgment.

Decision of Div. Ct. ([1911] 1 K. B. 499; 80 L. J. K. B. 250; 103 L. T. 839) reversed.

RANSON v. PLATT, [1911] 2 K. B. 291; 80 [L. J. K. B. 1138; 104 L. T. 881—C. A.]

III. LIABILITY OF BAILOR.

[No paragraphs in this vol. of the Digest.]

IV. GENERALLY.

[No paragraphs in this vol. of the Digest.]

BAKEHOUSES.

See FACTORIES AND WORKSHOPS;
LANDLORD AND TENANT.

BALLOT.

See ELECTIONS.

BANKERS AND BANKING.

	COL.
I. APPROPRIATION OF PAYMENTS	22
II. CHEQUES	22
[No paragraphs in this vol. of the Digest.]	
III. IN GENERAL	22
IV. BANK OF ENGLAND	23
[No paragraphs in this vol. of the Digest.]	

See also DEPENDENCIES, No. 16; MIS-
TAKE, No. 1.

I. APPROPRIATION OF PAYMENTS.

See also BANKRUPTCY, No. 23.

1. *Two Current Accounts—Company—Winding-up—Right of Set-off—British Guiana.*—In 1905 a company was indebted to the appellant bank to the extent of \$1,985 on current account. In that year they opened another current account with the bank on a written agreement that the bank would not appropriate any of the funds which might at any time be lying at the credit of the new account in reduction of the debt then due to the bank without the company's knowledge and consent. In 1909 the company was wound up. There was then owing to the bank \$2,991 on the original account. On the second account the bank held \$2,769 belonging to the company.

HELD—that the agreement of 1905 was an ordinary business agreement intended to be operative as long as the accounts were alive, but no longer, and that there was nothing in it to exclude the right of the bank to set off the one sum against the other.

BRITISH GUIANA BANK v. OFFICIAL RECEIVER,
[104 L. T. 754; 27 T. L. R. 454—P. C.]

II. CHEQUES.

[No paragraphs in this vol. of the Digest.]

III. IN GENERAL.

2. *Banker and Customer—Principal and Agent—Money Paid into Agent's Account—Determination of Agency.*—When a principal places money in a bank on the terms that a known agent shall draw upon it, he retains the power, if he rightly determines the agency, to require the bank to return the undrawn balance to him.

Semble—This is so, even where the bank

III. In General—Continued.

opens an account with the money in the known agent's name.

SOCIÉTÉ COLONIALE ANVERSOISE *v.* LONDON
[AND BRAZILIAN BANK, [1911] 2 K. B. 1024;
80 L. J. K. B. 862; 104 L. T. 499; 27
T. L. R. 351; 55 Sol. Jo. 460; 16 Com.
Cas. 158—Scrutton, J.

AFFIRMED ON APPEAL, on the ground that, upon the correspondence between the parties, the defendant bank was not justified in opening the account in the agent's name—[1911] 2 K. B. 1031, n.; 80 L. J. K. B. 1361; 105 L. T. 658; 28 T. L. R. 44—C. A.

3. *Bankers' Books Evidence—Copy of Entry made by Person not an Official of Bank—Proof of such Copy by such Person—Admissibility—“Some Person”—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), s. 5.*—By sect. 5 of the Bankers' Books Evidence Act, 1879, a copy of an entry in a banker's book is not receivable in evidence under the Act, unless it is proved that that copy has been examined with the original entry and is correct. The section further provides that such proof shall be given by “some person” who has examined the copy with the original entry.

HELD—that the words “some person” do not confine the proof to proof by an officer of the bank, but that it may be given by any person who has examined the copy with the original entry.

R. *v.* ALBUTT, 75 J. P. 112—C. C. A.

IV. BANK OF ENGLAND.

[No paragraphs in this vol. of the Digest.]

BANKRUPTCY AND INSOLVENCY.

	COL.
I. MISCELLANEOUS	24
II. ACT OF BANKRUPTCY	25
III. ADMINISTRATION OF BANKRUPT'S PROPERTY	25
[No paragraphs in this vol. of the Digest.]	
IV. ANNULMENT OF PROCEEDINGS	25
[No paragraphs in this vol. of the Digest.]	
V. BANKRUPTCY NOTICE	25
VI. COUNTY COURTS	28
VII. DEED OF ARRANGEMENT	28
VIII. DISCHARGE	28
[No paragraphs in this vol. of the Digest.]	
IX. DIVIDENDS	28
[No paragraphs in this vol. of the Digest.]	
X. FRAUDULENT PREFERENCE	28
[No paragraphs in this vol. of the Digest.]	
XI. INTERIM RECEIVER	28
[No paragraphs in this vol. of the Digest.]	
XII. OFFENCES	28
[No paragraphs in this vol. of the Digest.]	

	COL.
XIII. PETITION	28
XIV. PRACTICE	29
XV. PRIORITIES	32
XVI. PROOF OF DEBTS	32
XVII. PROPERTY OF BANKRUPT.	
(a) Generally	33
(b) Order and Disposition	35
[No paragraphs in this vol. of the Digest.]	
(c) Undischarged Bankrupt—After-acquired Property	35
XVIII. RECEIVING ORDER	35
XIX. SCHEME OF ARRANGEMENT	35
[No paragraphs in this vol. of the Digest.]	
XX. SET-OFF	35
[No paragraphs in this vol. of the Digest.]	
XXI. TRUSTEE	35
XXII. VOLUNTARY ASSIGNMENT	36
[No paragraphs in this vol. of the Digest.]	
XXIII. DEBTORS ACTS	36

See also EXECUTORS, No. 20; FRAUDULENT AND VOIDABLE CONVEYANCES, No. 1; SETTLEMENTS, Nos. 24, 26; SOLICITORS, No. 13.

I. MISCELLANEOUS.

1. *Domicil—New Zealand Bankruptcy—Personality in England—Subsequent English Bankruptcy—Title of Official Assignee in New Zealand—Statutory Assignees—Notice—Priorities—New Zealand Statutes, No. 12 of 1908 (8 Edw. 7), ss. 53, 61.*—In 1898 a debtor, whose domicil was English and who was entitled to a reversionary interest in personality in England, was adjudicated bankrupt in New Zealand. In 1904 he was adjudicated bankrupt in England. The reversionary interest, which by an oversight was not disclosed in the New Zealand bankruptcy, was discovered by the trustee in bankruptcy in England, and he at once gave notice of his title to the trustees of the fund.

HELD—that the official assignee in New Zealand was entitled, as against the trustee in bankruptcy in England, to the reversionary interest.

In re Davidson's Settlement Trusts ((1873) L. R. 15 Eq. 383) and *In re Lawson's Trusts* ([1896] 1 Ch. 175) followed.

In re Blithman ((1866) L. R. 2 Eq. 23) and *In re Hayward* ([1897] 1 Ch. 905) discussed.

A statutory assignee who first gives notice of his title to the trustees of a fund obtains no priority by so doing over assignees for value, nor even over a prior statutory assignee who may not have given notice.

IN RE ANDERSON, [1911] 1 K. B. 896; 80 L. J. K. B. 919; 104 L. T. 221; 18 Manson, 216—Phillimore, J.

2. *Committee of Inspection—Qualification for Appointment on Committee—Creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 22 (1)—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 5.*

I. Miscellaneous—Continued.

—A creditor is qualified for appointment on the committee of inspection by sect. 5 of the Bankruptcy Act, 1890, even before he has tendered a proof.

IN RE JONES, *EX PARTE* GOATLY, 56 Sol. Jo. 17
[—Phillimore, J.]

II. ACT OF BANKRUPTCY.

See also SETTLEMENTS, No. 24.

3. *Practice—Notice to Debtor of Act of Bankruptcy Committed by Creditor—Refusal to Pay Debt—Action by Creditor—Payment into Court—Debtor's Right to Costs of Action.*—

A creditor who had committed an available act of bankruptcy demanded payment from his debtors, but they refused to pay upon the ground that they had notice of the act of bankruptcy. The creditor sued them and they at once paid the money into Court under an order made upon their application. The plaintiff issued a summons for judgment under Ord. 14, which was adjourned until the expiration of three months from the date of the act of bankruptcy. After the three months expired the plaintiff obtained leave to sign final judgment and an order that each party should pay their own costs, except that the defendants should pay the plaintiff's costs of the application to pay into Court. On appeal:—

HELD—that the defendants were entitled to their costs of the action, including the costs of the application to pay into Court.

MCCARTHY v. CAPITAL AND COUNTIES BANK,
[1911] 2 K. B. 1088; 81 L. J. K. B. 14; 105
L. T. 327—C. A.

III. ADMINISTRATION OF BANKRUPT'S PROPERTY.

[No paragraphs in this vol. of the Digest.]

IV. ANNULMENT OF PROCEEDINGS.

[No paragraphs in this vol. of the Digest.]

V. BANKRUPTCY NOTICE.

See also No. 23, *infra*.

4. *Bankruptcy of Judgment Creditor—Leave to Trustee to Issue Execution—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), ss. 1, 4—R. S. C. Ord. 17, r. 4; Ord. 42, r. 23.*—Where a judgment creditor has become bankrupt the trustee in his bankruptcy can issue a bankruptcy notice founded on the judgment, provided that he obtains leave to issue execution thereon, under Ord. 42, r. 23, and need not be made a party to the action in which the judgment was obtained under Ord. 17, r. 4.

IN RE BAGLEY, [1911] 1 K. B. 317; 80 L. J.
[K. B. 168; 103 L. T. 470; 55 Sol. Jo. 48;
18 Manson, 1—C. A.]

5. *Bankruptcy of Judgment Creditor—Garnishee Order—Receiving Order.*—In May, 1909, G. recovered judgment against B. for £550. In July, M. & W., who were judgment creditors of G. for a larger amount, obtained a garnishee order *nisi* on the judgment recovered by G. against B., and in January, 1910, the garnishee order was made absolute. In December, 1909,

M. & W. served a bankruptcy notice on G. in respect of their judgment debt, and in February, 1910, a receiving order was made against him founded on his non-compliance with the bankruptcy notice.

HELD—that the discharge of the garnishee order was not a condition precedent to the right of G.'s trustee in bankruptcy to issue a bankruptcy notice against B., inasmuch as the operation of the order was put an end to by the receiving order against G.

IN RE BAGLEY, [1911] 1 K. B. 317; 80 L. J.
[K. B. 168; 103 L. T. 470; 55 Sol. Jo. 48;
18 Manson, 1—C. A.]

6. *Validity—Address of Judgment Creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886—1890, r. 136; Form 6.*—A judgment creditor having two houses in different parts of England inserted in a bankruptcy notice the address of the house from which he was absent during the currency of the notice. His butler was at the address given in the notice, and could have received payment of the debt or sent for the creditor at any time during the currency of the notice.

HELD—that the address given was sufficient, and that the bankruptcy notice was good.

Decision of Div. Ct. (55 Sol. Jo. 220) affirmed.

IN RE PERSSE, 55 Sol. Jo. 314—C. A.

7. *Validity—Notice to Pay Creditors or their Solicitors—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (1) (g).*—A bankruptcy notice which calls upon the debtor to pay the amount of the judgment debt to the judgment creditors "or to their solicitors" is bad for want of accordance with the terms of the judgment.

IN RE A DEBTOR (No. 305 of 1911), [1911]
[2 K. B. 718; 80 L. J. K. B. 1264;
105 L. T. 125; *sub nom.* IN RE A DEBTOR,
EX PARTE KITCHEN, AYLAND AND CRADDOCK,
55 Sol. Jo. 553—C. A.]

8. *Validity—Demand for Payment at Place out of the Jurisdiction—Foreign Creditor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (1) (g).*—A bankruptcy notice which requires the debtor to pay the judgment debt to the judgment creditors at an address outside the realm is not a good bankruptcy notice within sect. 4, sub-sect. 1 (g), of the Bankruptcy Act, 1883.

A foreign creditor, who has obtained judgment in this country, may properly serve a bankruptcy notice on the debtor requiring him to pay the judgment debt at a named address in this country where the creditor, or his authorised agent, will be in attendance to receive payment.

In re Persse (supra) followed; *In re A Debtor* (No. 305 of 1911) (*supra*) distinguished.

IN RE A DEBTOR (No. 1838 of 1911), [1912]
[1 K. B. 53; [1911] [W. N. 198; 105 L. T. 610; 28 T. L. R. 9; *sub nom.* IN RE PINCUS
AND IN RE HUTCHINSON & Co., 56 Sol. Jo. 36
—C. A.]

V. Bankruptcy Notice—Continued.

9. *Validity—Claim for Judgment Debt and Interest—No Deduction of Income Tax on Interest—“Yearly Interest.”*—A bankruptcy notice which claims interest on the amount of the final judgment on which it is based is not bad because it claims the whole amount of such interest due without deducting income tax therefrom.

IN RE COOPER, [1911] 2 K. B. 550; 80 L. J. [K. B. 990; 105 L. T. 273; 18 Manson, 211; *sub nom.* IN RE BOULTER, EX PARTE MANCHESTER AND LIVERPOOL DISTRICT BANKING CO., 55 Sol. Jo. 554—C. A.

10. *Validity—Provable Debt—Contingent Liability—Costs—Order for New Trial—Costs of First Trial to Abide Event of New Trial—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37 (3).*—An order for a new trial provided that the costs of the first trial should abide the event of the new trial. The plaintiff in the action subsequently became bankrupt, but the bankruptcy was annulled before the new trial took place. The new trial resulted in favour of the defendant, and the plaintiff was ordered to pay the costs of the first trial, which had been taxed, and the costs of the second trial to be taxed. The defendant served on the plaintiff a bankruptcy notice in respect of the costs of the first trial. The plaintiff impeached the validity of the bankruptcy notice on the ground that it related to a debt provable in the late bankruptcy.

Held—that at the date of the bankruptcy the plaintiff was not subject to a contingent liability to pay costs by reason of any obligation incurred before the date of the bankruptcy within sect. 37 of the Bankruptcy Act, 1883, and that the objection to the bankruptcy notice failed.

IN RE A DEBTOR (No. 68 of 1911), [1911] 2 [K. B. 652; 80 L. J. K. B. 1224; 104 L. T. 905—C. A.

11. *Bankruptcy Notice pending Equitable Execution—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (1) (g).*—A judgment creditor obtained, by way of equitable execution, the appointment of a receiver of certain property of the judgment debtor. There was no evidence that there was any money of the judgment debtor in the hands of the receiver, nor was he in possession of any interest of the judgment debtor which could be sold.

Held—that as the appointment of the receiver did not prevent the debtor from paying the judgment debt it did not operate as a stay of execution within the meaning of sect. 4, sub-sect. 1 (g), of the Bankruptcy Act, 1883, and that the judgment creditor was therefore entitled to serve a bankruptcy notice on the judgment debtor in respect of the judgment.

IN RE BOND, EX PARTE CAPITAL AND COUNTIES [BANK, LD., [1911] 2 K. B. 988; *sub nom.* IN RE LUPTON, EX PARTE LUPTON, 55 Sol. Jo. 717—Div. Ct.

VI. COUNTY COURTS.

12. *Arrest of Debtor—Mileage Fee Payable to High Bailiff—Scale of Fees and Percentages, Table C.*—Where a warrant directs the high bailiff of a county court to arrest a debtor and to deliver him to the governor of the prison named in the warrant, the high bailiff is entitled to the mileage fee of 5d. per mile allowed by Table C. in the Order as to Fees and Percentages, made under the Bankruptcy Acts, 1883 and 1890, for the distance to the place where the debtor is arrested, and also from there to the prison.

IN RE CROPLEY, [1911] 2 K. B. 309; 80 L. J. [K. B. 822; 104 L. T. 720; 27 T. L. R. 391; 18 Manson, 119—Phillimore, J.

13. *Practice—Committal for Disobedience to Order of Court—Mode of Service if Order Disobeyed—Bankruptcy Rules, 1886—1890, r. 92—County Court Rules, 1903 and 1904, Ord. 25, r. 58—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 24, 53, 142.*—Where it is sought to commit a bankrupt for disobedience to an order made under sect. 53 of the Bankruptcy Act, 1883, it is not necessary that such order shall have been personally served upon the bankrupt or endorsed with a warning of the consequences of non-compliance therewith.

IN RE PICKARD, EX PARTE OFFICIAL RECEIVER, [56 Sol. Jo. 144—Div. Ct.

VII. DEED OF ARRANGEMENT.

14. *Registration—Validity—Affidavit Sworn before Solicitor of Trustee—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), ss. 5, 6—Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 1—R. S. C., Ord. 38, r. 16.*—The affidavit by the debtor required by sect. 6 of the Deeds of Arrangement Act, 1887, to be filed with the copy of the deed of arrangement when registered, if sworn before a commissioner for oaths who is the solicitor of the trustee under the deed, is void under sect. 1 (3) of the Commissioners for Oaths Act, 1889, and Ord. 38, r. 16, and therefore the deed of arrangement when registered is a nullity.

Baker v. Ambrose ([1896] 2 Q. B. 372) applied.

IN RE BAGLEY, [1911] 1 K. B. 317; 80 L. J. [K. B. 168; 103 L. T. 470; 55 Sol. Jo. 48; 18 Manson, 1—C. A.

VIII. DISCHARGE.

[No paragraphs in this vol. of the Digest.]

IX. DIVIDENDS.

[No paragraphs in this vol. of the Digest.]

X. FRAUDULENT PREFERENCE.

[No paragraphs in this vol. of the Digest.]

XI. INTERIM RECEIVER.

[No paragraphs in this vol. of the Digest.]

XII. OFFENCES.

[No paragraphs in this vol. of the Digest.]

XIII. PETITION.

See also Nos. 20, 23, *infra*.

15. *Conduct of Petitioning Creditor—Assignment for Benefit of Creditors—Assent—Secret*

XIII. Petition—Continued.

Arrangement—Extortion—"Sufficient Cause" for Refusal of Receiving Order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7 (3).—The debtor, at a time when he was hopelessly insolvent and was about to call a meeting of his creditors, took delivery on credit of goods of considerable value from the petitioning creditors. At the meeting the petitioning creditors refused to assent to an assignment for the benefit of creditors, unless the goods were returned to them or their value allowed; but, after a resolution for an assignment had been passed, they took part in the nomination of the committee of inspection. On receiving a form of assent to the assignment they telephoned to the accountant who had charge of the debtor's affairs repeating their demand for a return of the goods or payment of their value under a threat of legal proceedings. On the refusal of their demand they commenced an action in the King's Bench Division against the debtor for goods sold and delivered and obtained final judgment against him, and, on his failure to comply with a bankruptcy notice issued in respect of that judgment, filed a petition in bankruptcy against him founded on his non-compliance with the bankruptcy notice:—

HELD—that the petitioning creditors had not either by any improper conduct or by any assent to the assignment precluded themselves from taking proceedings in bankruptcy, and that "sufficient cause" within sect. 7, sub-sect. 3, of the Bankruptcy Act, 1883, had not been shown why a receiving order should not be made.

In re Shaw ((1901) 83 L. T. 754) explained and distinguished.

Per Cozens-Hardy, M.R., and Kennedy, L.J.—*Seem*le the petitioning creditors could not have relied upon the execution of the assignment as an act of bankruptcy.

IN *RE SUNDERLAND*, [1911] 2 K. B. 658; 105 L. T. 233; *sub nom.* IN *RE SUNDERLAND*, EX PARTE LEECH AND SIMPKINSON, 80 L. J. K. B. 825; 27 T. L. R. 454; 55 Sol. Jo. 568; 18 Manson, 123—C. A.

XIV. PRACTICE.

See also No. 13, *supra*.

16. *Judgment Debtor—Execution—Seizure by Sheriff—Claimant—Interpleader—Sale by Sheriff—Bankruptcy of Judgment Debtor—"Costs of Execution"—Sheriff's Costs of Interpleader—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11—Bankruptcy Rules, 1886 and 1890, r. 119.*—Goods of a judgment debtor which had been seized by the sheriff under a writ of *fi. fa.* were claimed by a bill of sale holder and the sheriff interpleaded. On the hearing of the interpleader summons the claim was admitted and an order was made for the sale of the goods and for payment out of the proceeds of the claim of the bill of sale holder, the amount of the execution, and the costs of all parties, including the costs and charges of the sheriff. Before the sale notice

was served on the sheriff that a receiving order had been made against the judgment debtor:—

HELD—that the sheriff's costs of the interpleader were not "costs of the execution" within sect. 11 of the Bankruptcy Act, 1890, and consequently were not payable out of the debtor's estate.

Decision of Phillimore, J. ([1911] 1 K. B. 104; 80 L. J. K. B. 204; 103 L. T. 576; 27 T. L. R. 59; 55 Sol. Jo. 78), reversed.

IN *RE ROGERS*, [1911] 1 K. B. 641; *sub nom.*

[IN *RE ROGERS*, EX PARTE SHERIFF OF SUSSEX, 80 L. J. K. B. 418; 103 L. T. 883; 55 Sol. Jo. 219; 18 Manson, 22; *sub nom.* IN *RE ROGERS*, EX PARTE OFFICIAL RECEIVER, 27 T. L. R. 199—C. A.]

17. *Appeal—Order Extending Time for Appealing—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 104—Bankruptcy Appeals (County Courts) Act, 1884 (47 & 48 Vict. c. 9), s. 2—Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1 (1) (a).*—Sect. 1, sub-sect. 1 (a), of the Judicature (Procedure) Act, 1894, which provides that no appeal shall lie from an order allowing an extension of time for appealing from a judgment or order, applies to an order of a Divisional Court in bankruptcy extending the time for appealing from an order of the county court.

IN *RE A DEBTOR* (No. 20 OF 1910), [1911] 1 K. B. 841; 80 L. J. K. B. 508; 104 L. T. 233; 18 Manson, 107—C. A.

18. *Appeal—"Person Aggrieved"—Administration—Creditor of Deceased Debtor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 104, 125.*—The appellants, who were creditors of a deceased person, took out an originating summons for the administration of his estate in the Chancery Division. On the same day the respondents, who claimed to be creditors of the estate of the deceased in respect of goods supplied by them after his death for the purpose of his business, which was being carried on by his executrix, presented a petition under sect. 125 of the Bankruptcy Act, 1883, praying for the administration of the estate of the deceased in bankruptcy. On this petition an order for administration in bankruptcy was made.

HELD—that the appellants were persons "aggrieved" by the order, and were, therefore, entitled to appeal against it.

HELD ALSO—that the respondents were not creditors "of a deceased debtor" within sect. 125, and that there was, consequently, no jurisdiction to make an order for administration in bankruptcy on their petition.

IN *RE KITSON*, EX PARTE T. SUGDEN & SON, [LD., [1911] 2 K. B. 109; 80 L. J. K. B. 1147; 55 Sol. Jo. 443; 18 Manson, 224—Div. Ct.]

19. *Costs—Appointment of New Trustee—Taxation—Allocatur—No Notice to New Trustee—Retaxation—Bankruptcy Rules, 1886 and 1890, rr. 120, 122.*—At a meeting of the creditors of a bankrupt, at which P. was appointed trustee, a

XIV. Practice—Continued.

proof by one V. for a large amount was rejected for voting purposes. Subsequently a solicitor was duly appointed to act for the trustee in certain matters relating to the estate. On March 1st, 1910, V. successfully appealed against the rejection of his proof. A new meeting of creditors was thereupon called for March 18th, and on that date W. was appointed trustee in place of P. On March 15th, the solicitor who had acted for P. lodged his bill for costs of taxation and obtained an appointment to tax same, but he gave no notice thereof to the official receiver or to the new trustee as required by rule 120 of the Bankruptcy Rules, 1886 and 1890. On April 22nd the taxing Master, who was not aware of the appointment of the new trustee, taxed the bill and gave his allocatur. The solicitor then applied to the new trustee for payment of the amount of the allocatur, but the trustee declined to pay same, and he now applied that the allocatur might be set aside and that the bill of costs might be remitted for retaxation.

HELD—that the allocatur should be suspended as notice of the appointment to tax the costs ought to have been given to the new trustee and also to the official receiver, and that the bill of costs must be referred back for retaxation with liberty to the new trustee to attend and to carry in objections if so advised.

IN RE SMITH, EX PARTE WILSON, [1910] 2
[K. B. 346; 80 L. J. K. B. 16; 102 L. T. 861;
26 T. L. R. 492; 17 Manson, 290—Phillimore, J.]

20. Discovery—Interrogatories—Application by Petitioning Creditor—Bankruptcy Rules, 1886 and 1890, r. 72—Affidavit of Truth of Statements in Petition—Form 12.—A petitioning creditor will not be allowed to administer interrogatories to, or to obtain discovery from, a debtor to assist him to support his petition; nor should he use Form 12 in swearing to the truth of the allegations in his petition unless they are true to his knowledge.

IN RE A DEBTOR (No. 7 of 1910), [1910]
[2 K. B. 59; 17 Manson, 263; *sub nom.*
IN RE A DEBTOR, 102 L. T. 691; sub nom.
IN RE A DEBTOR, EX PARTE PETITIONING CREDITORS, 26 T. L. R. 429; sub nom. IN RE A DEBTOR, EX PARTE TAYLOR & Co., LD.,
54 Sol. Jo. 459—C. A.]

21. First Meeting of Creditors—Quorum—Persons Entitled to Vote at Meeting—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. I, rr. 8, 14, 23—Bankruptcy Rules, 1886—1890, r. 257.—In calculating a quorum of creditors present at a first meeting of creditors only those who have lodged proofs can be calculated; consequently if there is only one creditor present who has lodged a proof he forms a quorum, and can carry a resolution for the appointment of the trustee.

IN RE THOMAS, EX PARTE WARNER, [1911]
[W. N. 123; 55 Sol. Jo. 482—Phillimore, J.]

22. Sequestration—Profits of Benefice—Relaxation of Order—Debts not Paid in Full—Jurisdiction—Form of Order—Bankruptcy Act, 1883

(46 & 47 Vict. c. 52), s. 89.]—On appeal from the refusal by a county court judge, on the ground of no jurisdiction, of an application by the Official Receiver under sect. 89 of the Bankruptcy Act, 1883, the Divisional Court sanctioned a form of order directing the Receiver to consent to relaxation of an order of sequestration of the profits of a benefice held by the bankrupt, a clergyman, when the debts in the bankruptcy had not been paid in full but the bankrupt offered a sum of money which the Receiver was ready to accept, no creditor opposing.

IN RE BISCOE, EX PARTE OFFICIAL RECEIVER
[46 L. J. N. C. 516—Div. Ct.]

XV. PRIORITIES.

See No. 1, *supra*; **EXECUTORS, No. 28.**

XVI. PROOF OF DEBTS.

See also **HUSBAND AND WIFE, No. 12;**
MONEY AND MONEY-LENDERS, No. 1;
SOLICITORS, No. 12.

23. Gaming Debt—Illegal Consideration—Guarantee to Bank to enable Debtor to Pay a Lost Bet—Money paid in respect of Agreement void under the Gaming Act, 1845 (8 & 9 Vict. c. 109)—Gaming Act, 1892 (55 & 56 Vict. c. 9), s. 1.]—In March, 1903, L. lent the debtor £1,000 for the purpose of betting on horse races, any profits resulting from the betting to be equally divided. In the same year L. guaranteed an overdraft to the extent of £1,000 at the debtor's bank. There were no profits on the betting, and all the money having been lost, L. in September, 1903, guaranteed a further overdraft of £500 in order to enable the debtor to pay bets to that amount which he had lost. In 1906 L. paid £1,633 to the bank under his guarantees and recovered judgment in default of defence against the debtor for £3,000. The debtor having failed to comply with a bankruptcy notice to pay the amount of the judgment debt, L. presented a bankruptcy petition against him. The registrar dismissed the petition on the ground that having regard to the Gaming Acts, there was no valid debt to support it.

HELD—on appeal—that as to the guarantee for £500 the transaction was not invalid; that the debt arising out of the loan for the purpose of enabling the debtor to pay a bet which he had lost, not being for an illegal consideration, could be proved for in bankruptcy; and that the money was not paid by L. "in respect of" a gaming contract within the meaning of sect. 1 of the Gaming Act, 1892.

HELD ALSO—that inasmuch as the guarantee was given in 1903, and the payment to the bank was not made till 1906, the banking account having been running in the interval, having regard to the rule in *Clayton's Case* ((1816) 1 Mer. 585), the original transaction, even if tainted with vice under the Gaming Acts, must be taken to have been wiped out, so that no question arose with regard to it.

HELD—therefore, on both grounds, that there was a good debt to support the petition.

Ex parte Pyke ([1878] 8 Ch. D. 754) followed.

XVI. Proof of Debts—Continued.

Tatam v. Reeve ([1893] 1 Q. B. 44) and *Saffery v. Mayer* ([1901] 1 K. B. 11) distinguished.

IN RE O'SHEA, EX PARTE LANCASTER, [1911]
[2 K. B. 981; 81 L. J. K. B. 70; 105 L. T.
486—C. A.]

24. *Formation of Company—Fraudulent Promoter—Debtenture Issue—Secret Profit—Bankruptcy of Promoter—Proof.*—A corporation consisted of only the seven signatories to its memorandum of association. It was formed by D. and G., two of the signatories, to cloak their identity in carrying on their financial operations, and they were the sole directors and managers of the corporation. The corporation then contracted to buy a licence to work a quarry for a small sum and promoted a company to acquire the licence, and the usual contracts were entered into by means of a trustee for the company, whereby the corporation as vendors agreed to sell the licence to the company for £10,500 in cash, £2,000 in debentures, and £5,500 in fully-paid shares of £1 each of the company. D. and G. then caused the company to be registered and found the seven signatories to its memorandum of association and its directors, all of whom were their creatures. The company duly adopted the contract of sale and issued to the corporation 5,500 fully-paid shares and £2,000 in debentures. D. and G. then prepared prospectuses which were issued by the company to the public inviting subscriptions to an issue of 2,000 debentures of £10 each, and as subscriptions came in the company paid the corporation some £9,000 cash (on account of the £10,500), which D. and G. then divided between themselves. The only shareholders of the company were the seven signatories to its memorandum and the corporation as holders of the 5,500 shares. The contracts and prospectuses disclosed that the corporation was promoter and vendor to the company and was making the profit, but did not disclose the fact that D. and G. were the real promoters and vendors and were receiving the profit through the corporation. The company went into liquidation, and subsequently D. and G. became bankrupt. D. had assets, G. had none. They were prosecuted for fraudulent and material misstatements in the prospectuses and convicted.

HELD—that under the circumstances the corporation was only an "alias" for D. and G., and that the liquidator of the company could prove in the bankruptcy of D. for the whole of the secret cash profit that D. and G. had received.

IN RE DARBY, EX PARTE BROUGHAM, [1911]
[1 K. B. 95; 80 L. J. K. B. 180; 18 Manson,
10—Phillimore, J.]

XVII. PROPERTY OF BANKRUPT.

See also No. 1, *supra*; SETTLEMENTS,
No. 26.

(a) Generally.

25. *Marriage Settlement—Covenant to Settle After-acquired Furniture—“Actually Transferred”*—*Bankruptcy Act, 1883* (46 & 47 Vict.

c. 52), s. 47 (2).—The debtor on his marriage executed a settlement containing a covenant to settle his after-acquired furniture. He from time to time purchased furniture which was used in his home, but no list was furnished to the trustee of the settlement nor did the trustee know the amount so purchased; but he was in the habit of visiting the debtor at the house.

HELD—that the use of the furniture at a house which was purchased in the wife's name, where it ought to have been used, constituted an actual transfer to the trustee within the meaning of sect. 47, sub-sect. 2, of the *Bankruptcy Act, 1883*, and that the trustee in bankruptcy had no right to claim the furniture.

Decision of Phillimore, J. ([1910] W. N. 190; 54 Sol. Jo. 721) affirmed.

IN RE MAGNUS, EX PARTE SALAMAN, [1910]
[2 K. B. 1049; 80 L. J. K. B. 71; 103 L. T.
406; 17 Manson, 282—C. A.]

26. *Property Divisible amongst Creditors—Landlord and Tenant—Assignment of Beneficial Interest in Lease—Trustee and Cestui que Trust—Indemnity—Judgment for Damages for Breach of Covenant—Bankruptcy of Lessee—Vesting of Right of Indemnity in Trustee in Bankruptcy—Recovery of Judgment Debt from Beneficial Owner under Indemnity—Rights of Trustee in Bankruptcy and Landlord—Bankruptcy Act, 1883* (46 & 47 Vict. *c. 52), s. 44.*—A lessee became trustee of the leasehold premises for his wife by reason of the purchase by her of the beneficial interest therein, and the wife as such beneficial owner was liable to indemnify her husband against any claim by the landlord under the covenants in the lease. On the expiration of the lease the landlord obtained judgment against the lessee for £711 for rent and damages for breach of covenant, but before the amount of the lessee's liability was ascertained the lessee was adjudicated a bankrupt. The landlord obtained leave in the bankruptcy to commence an action in the joint names of the trustee in bankruptcy and himself to recover the £711 from the wife under the lessee's right of indemnity, but without prejudice to the question whether the money so recovered should be treated as assets in the bankruptcy or be retained by the landlord. The action was brought and was compromised by the payment by the wife of £520.

HELD—that the trustee in bankruptcy could only avail himself of the right of indemnity for the purpose of passing on the money to the principal creditor, and that consequently the landlord was entitled to retain the money on account of his debt.

Decision of Phillimore, J., reversed.

IN RE RICHARDSON, EX PARTE GOVERNORS OF
[ST. THOMAS'S HOSPITAL, [1911] 2 Ch. 705;
80 L. J. K. B. 1232; 105 L. T. 226—C. A.]

27. *“Additional Allowance” to Civil Servant on Retirement—Vesting in Trustee—Bankruptcy Act, 1883* (46 & 47 Vict. *c. 52), ss. 44, 53—Superannuation Act, 1909* (9 Edw. 7, *c. 10), s. 1.*—The “additional allowance” granted under sect. 1 of the *Superannuation*

XVII. Property of Bankrupt—Continued.

Act, 1909, to a civil servant on his retirement does not vest in his trustee in bankruptcy under sect. 44 of the Bankruptcy Act, 1883, but is "compensation granted by the Treasury" within the meaning of sect. 53, sub-sect. 2, of the Bankruptcy Act, 1883. Such "additional allowance" is therefore the property of the bankrupt subject to the provisions of sect. 53.

Decision of Phillimore, J. ([1911] W. N. 180; 105 L. T. 336; 27 T. L. R. 566; 55 Sol. Jo. 689) reversed.

IN RE LUPTON, EX PARTE OFFICIAL RECEIVER.
[1912] 1 K. B. 107; [1911] W. N. 213;
28 T. L. R. 45—C. A.

28. Adjudication of Bankruptcy in England—Spes Successionis under Scottish Settlement—Action of Declarator by English Trustee—Jurisdiction of Scottish Court—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 54, 168.]—An English trustee in bankruptcy brought an action of declarator in Scotland to have it declared that a *spes successionis* which the bankrupt had under a settlement had vested in him as trustee.

HELD—that the Court had jurisdiction to grant the decree sought; that the *spes successionis*, being an interest assignable by the bankrupt, was "property" within the meaning of s. 168 of the Bankruptcy Act, 1883, and that it had vested in the trustee.

SALAMAN v. TOD, [1911] S. C. 1214; 48 Sc. L. R. [974—Ct. of Sess.]

(b) Order and Disposition.

[No paragraphs in this vol. of the Digest.]

(c) Undischarged Bankrupt — After-acquired Property.

See also **EXECUTORS**, No. 19.

29. Interest Under Settlement—Fund in Hands of Trustees—Knowledge of Trustees—Notice Intervention of Trustee in Bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. 2; s. 50, sub-s. 5.]—A settlement made on a second marriage by an undischarged bankrupt of interests acquired after his bankruptcy in trust funds settled before his bankruptcy and still in the hands of the settlement trustees is a transaction for value within the rule laid down in *Cohen v. Mitchell*, (1890) 25 Q. B. D. 262, and, if the transaction is *bonâ fide* on the part of the second wife, is valid against the trustee in bankruptcy until he intervenes by giving formal notice to the trustees of the settlement or otherwise. The facts that the settlement trustees have actual knowledge of the bankruptcy and that the value given for the transaction is not such as will increase the bankrupt's estate do not prevent the application of the rule.

IN RE BEHREND'S TRUST, SURMAN v. BIDDLEL, [1911] 1 Ch. 687; 80 L. J. Ch. 394; 104 L. T. 626; 55 Sol. Jo. 459; 18 Manson, 111—Eady, J.

XVIII. RECEIVING ORDER.

See No. 4, *supra*; **SETTLEMENTS**, No. 24.

XIX. SCHEME OF ARRANGEMENT.

[No paragraphs in this vol. of the Digest.]

XX. SET-OFF.

[No paragraphs in this vol. of the Digest.]

XXI. TRUSTEE.

See also Nos. 1, 26, *supra*.

30. Bankruptcy of Judgment Creditor—Leave to Trustee to issue Execution—Not made Party to Action—Right to issue Bankruptcy Notice—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), ss. 1, 4—R. S. C., Ord. 17, r. 4; Ord. 42, r. 23.]—Where a judgment creditor becomes bankrupt, his trustee in bankruptcy need not be made a party to the action under Ord. 17, r. 4, before obtaining leave to issue execution under Ord. 42, r. 23, and, having obtained that leave, is under sect. 1 of the Bankruptcy Act, 1890, to be deemed a creditor for the purposes of sect. 4 of the Bankruptcy Act, 1883.

Dictum of Cotton, L.J., in *In re Woodall* ((1884) 13 Q. B. D. 479, 483) approved.

Dictum of Wright, J., in *In re Clements* ([1901] 1 K. B. 260, 263) dissented from.

IN RE BAGLEY, [1911] 1 K. B. 317; 80 L. J. [K. B. 168; 103 L. T. 470; 55 Sol. Jo. 48; 18 Manson, 1—C. A.]

31. Default of Trustee—Fidelity Bond—Liability of Assurance Company under Bond to Board of Trade—Penal Interest Payable by Trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 74 (6).]—When an assurance company gives a bond to the Board of Trade to make good any loss or damage occasioned to the bankrupt's estate by any default of the trustee it is not liable to make good the trustee's default in payment of the penal interest exacted from him, under sect. 74, sub-sect. 6, of the Bankruptcy Act, 1883, for improper retention of the moneys of the estate.

Decision of Phillimore, J. ([1910] 1 K. B. 401; 79 L. J. K. B. 434; 101 L. T. 862; 26 T. L. R. 167; 54 Sol. Jo. 136; 17 Manson, 81) reversed.

BOARD OF TRADE v. EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LD., [1910] 2 K. B. 649; 79 L. J. K. B. 1001; 102 L. T. 850; 26 T. L. R. 511; 54 Sol. Jo. 581; 17 Manson, 273—C. A.

32. Appointment of Trustee and Committee of Inspection—Proofs of Majority of Creditors and Committee Subsequently Expunged—Annulment of Adjudication—Right of Trustee to Costs Incurred with Sanction of Committee—Qualifications for Appointment on Committee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 21 (1), (2), (4), 35 (2), 138, 143 (2).]—A trustee who has been appointed by creditors and permitted to incur costs by a committee of inspection, whose proofs have subsequently been expunged, with the result that the adjudication has been annulled and a new trustee appointed, is, in the absence of fraud on his part, entitled to have such costs out of the estate.

IN RE JONES, EX PARTE GOATLY, 56 Sol. Jo. 17 [—Phillimore, J.]

XXII. VOLUNTARY ASSIGNMENT.

[No paragraphs in this vol. or the Digest.]

XXIII. DEBTORS ACTS.

33. Committal—No Personal Service of Order of Court—Service of Summons—Debtors Act, 1869 (32 & 33 Vict. c. 62).]—An order was made on January 21st, 1911, in the King's Bench Division under the Debtors Act, 1869, that the judgment debtor should pay a sum of money within seven days. On February 11th a summons was issued calling upon him to appear on February 25th in respect of non-compliance with the order of January 21st, and the summons was duly served upon him. The judgment debtor was present when the order of January 21st was made, and was also present on February 25th when the summons came on for hearing.

HELD—that although the order of January 21st had not been personally served on the judgment debtor, the Court had jurisdiction to make an order of committal against him.

HAYDON v. HAYDON, [1911] 2 K. B. 191; 80 [L. J. K. B. 672; 104 L. T. 477; 27 T. L. R. 321—C. A.]

BARRATRY.

See CRIMINAL LAW; INSURANCE; SHIPPING AND NAVIGATION.

BARRISTERS.

See PRACTICE, No. 40; SOLICITORS.

BASTARDY.**I. AFFILIATION PROCEEDINGS.**

[No paragraphs in this vol. of the Digest.]

II. CUSTODY OF BASTARDS.

[No paragraphs in this vol. of the Digest.]

III. LEGITIMACY.

[No paragraphs in this vol. of the Digest.]

See also POOR LAW, No. 4.

**BATHS AND WASH-
HOUSES.**

See LOCAL GOVERNMENT; PUBLIC HEALTH.

BATTERY.

See CRIMINAL LAW; TRESPASS.

BECHUANALAND.

See DEPENDENCIES AND COLONIES.

BEES.

See ANIMALS.

BENCH WARRANTS.

See CRIMINAL LAW AND PROCEDURE.

BENEFICE.

See ECCLESIASTICAL LAW.

**BENEFIT BUILDING
SOCIETIES.**

See BUILDING SOCIETIES.

BETTING.

See CRIMINAL LAW AND PROCEDURE
GAMING AND WAGERING; INTOXI-
CATING LIQUORS.

BICYCLES.

See CARRIERS; HIGHWAYS; STREET
TRAFFIC.

**BILLS OF EXCHANGE,
PROMISSORY NOTES,
AND NEGOTIABLE
INSTRUMENTS.**

For CHEQUES, *see under* BANKERS AND
BANKING, II.

COL.

I. BILLS OF EXCHANGE . . . 38

II. PROMISSORY NOTES . . . 39

III. INSTRUMENTS NEGOTIABLE BY
MERCANTILE USAGE . . . 39

[No paragraphs in this vol. of the Digest.]

I. BILLS OF EXCHANGE.

See also CRIMINAL LAW, No. 62.

1. Duress—Bill in Hands of Original Party—Burden of Proof—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 30.]—The provisions of sect. 30, sub-sect. 2, of the Bills of Exchange Act, 1882, in reference to the shifting of the burden of proof where in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress or illegality, do not apply when the action is by the person to whom the bill was originally delivered, and in whose hands it still remains. In such a case the burden of proof remains on the defendant.

TALBOT v. VON BORIS, [1911] 1 K. B. 854;
[80 L. J. K. B. 661; 104 L. T. 524; 27
T. L. R. 266; 55 Sol. Jo. 290—C. A.]

II. PROMISSORY NOTES.

2. *Husband and Wife Joint Makers of Note—Wife Signing Note for Accommodation of Husband—Accommodation Endorser—No Knowledge by Endorser that Wife Signed to Accommodate Husband—Liability of Wife.* A husband and wife were parties to a promissory note as makers, and the husband's brother was the payee who endorsed the note for the accommodation, as he believed, of both husband and wife. In fact the wife only signed the note for the accommodation of her husband. The note having been dishonoured:—

HELD—that the wife and the payee were co-sureties, and that as between them the wife was only liable for half the amount of the note.

GODSELL v. LLOYD, 27 T. L. R. 383—Scrutton, J.

III. INSTRUMENTS NEGOTIABLE BY MERCANTILE USAGE.

[No paragraphs in this vol. of the Digest.]

BILLS OF LADING.

See SHIPPING AND NAVIGATION.

BILLS OF SALE.

I. GENERALLY	COL. 39
[No paragraphs in this vol. of the Digest.]	
II. REGISTRATION	39
III. SEIZURE	39
[No paragraphs in this vol. of the Digest.]	
IV. STATUTORY FORM	39
I. GENERALLY.	
[No paragraphs in this vol. of the Digest.]	

II. REGISTRATION.

1. *Settled Chattels—Trustees—Tenant for Life and Reversioner—Mortgage of Chattels by Reversioner—Want of Registration—Validity of Mortgage—Equitable Chose in Action—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), ss. 3, 4—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 3, 8.*—An equitable or legal reversionary interest in chattels is a chose in action within the exception to "personal chattels" in sect. 4 of the Bills of Sale Act, 1878.

In re Triton ((1889) 61 L. T. 301) followed.

IN RE THYNNE, *THYNNE v. GREY*, [1911] 1 [Ch. 282; 80 L. J. Ch. 205; 104 L. T. 19; 18 Manson, 34—Neville, J.

See S.C. SETTLEMENTS, No. 7.

III. SEIZURE.

[No paragraphs in this vol. of the Digest.]

IV. STATUTORY FORM.

2. *Ambiguity—Instalments—Principal and Interest—Bills of Sale Act (1878) Amendment*

Act, 1882 (45 & 46 Vict. c. 43), s. 9.—The plaintiff on receiving from the defendant an advance of £30 agreed to repay the £30, with interest at 10*d.* in the £, by monthly instalments of £2, such instalments to include interest. The plaintiff granted a bill of sale to the defendant whereby he agreed to repay the principal sum of £30, together with interest due, by instalments of £2 to be paid on a fixed day of each succeeding month, and further agreed that in default of payment of any instalment of the said principal sum he would pay interest on such unpaid instalment at the rate of 10*d.* in the £.

HELD (Moulton, L.J., dissenting)—that the bill of sale was not void as not expressing the true bargain between the parties, or as not being in accordance with the form in the schedule to the Bills of Sale Act (1878) Amendment Act, 1882.

Decision of Bray, J., affirmed.

ROSEFIELD v. PROVINCIAL UNION BANK, [1910] 2 K. B. 781; 79 L. J. K. B. 1150; 103 L. T. 378; 17 Manson, 318—C. A.

3. *Defeasance or Condition Not Contained in Bill of Sale—Condition Contrary to Statutory Form—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10 (3)—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 9.*—In an action to set aside a bill of sale the jury found that the bill was given after a certain letter was signed, and that the signature of the letter was a condition of obtaining the advance. The letter was in the following terms:—"I have this day obtained from you the sum of £34 upon the faith of my representation that the furniture in the house at . . . is my own property, entirely free from any charge either by bill of sale, marriage settlement, or hire system agreement, and I hereby undertake and agree not to mortgage the same or any part thereof in any way whatsoever nor borrow from any other loan office until the whole of the above sum has been repaid. Further, I am quite aware that it is solely upon the faith of these representations that I have obtained the advance from you."

HELD—that the letter and the bill of sale were all one transaction intended to secure one debt, and that the bill of sale was void.

HALL v. WHITEMAN, 132 L. T. Jo. 177; *Times*, [December 18th, 1911—C. A.

BIRTH, PROOF OF.

See EVIDENCE.

BIRTHS, DEATHS & MARRIAGES, REGISTRATION OF.

See EXECUTORS AND ADMINISTRATORS; HUSBAND AND WIFE; INFANTS; MEDICINE AND PHARMACY.

BISHOPS.

See ECCLESIASTICAL LAW.

BLACKMAIL.

See CRIMINAL LAW AND PROCEDURE.

BLASPHEMY.

See CRIMINAL LAW AND PROCEDURE.

BOARDING-HOUSES.

See INNS AND INNKEEPERS ; LANDLORD AND TENANT.

BONDS.

See also EXECUTORS, Nos. 4, 9.

1. *Administration Bond—Condition to Render a True and Just Account whenever Required by Law so to do—Particular Breaches not Alleged—Statute 8 & 9 Will. 3, c. 11, s. 8.*—An administration bond containing the usual conditions is a bond within the provisions of the Statute 8 & 9 Will. 3, c. 11.

COPE *v.* BENNETT, HARRIS THIRD PARTY
[(No. 1), 55 Sol. Jo. 521—Eady, J.]

BOOKS, ENTRIES IN.

See BANKERS AND BANKING ; DISCOVERY ; EVIDENCE.

BOROUGHES.

See LOCAL GOVERNMENT.

BORSTAL SYSTEM.

See CRIMINAL LAW AND PROCEDURE, I. (g).

BOTTOMRY.

See SHIPPING AND NAVIGATION.

BOUGHT AND SOLD NOTES.

See STOCK EXCHANGE.

BOUNDARIES AND FENCES.

See WATERS AND WATERCOURSES, No. 8.

BRAWLING.

See CRIMINAL LAW AND PROCEDURE ; ECCLESIASTICAL LAW.

BREACH OF PROMISE OF MARRIAGE.

See CONFLICT OF LAWS ; HUSBAND AND WIFE.

BREACH OF THE PEACE.

See CRIMINAL LAW AND PROCEDURE.

BREAD.

See FACTORIES AND WORKSHOPS ; FOOD AND DRUGS.

BRIBERY.

See AGENCY ; CRIMINAL LAW AND PROCEDURE ; ELECTIONS.

BRIDGES.

See HIGHWAYS, STREETS AND BRIDGES, X.

BRITISH COLUMBIA.

See DEPENDENCIES AND COLONIES.

BRITISH SOUTH AFRICA.

See DEPENDENCIES AND COLONIES.

BROKERS.

See AGENCY ; SALE OF GOODS ; STOCK EXCHANGE.

BROTHELS.

See CRIMINAL LAW AND PROCEDURE.

**BUILDING CONTRACTS,
ENGINEERS, AND
ARCHITECTS.**

COL.

I. ARCHITECTS 43

II. BUILDING AND ENGINEERING CON-
TRACTS 43

See also ARBITRATION, Nos. 4, 5.

I. ARCHITECTS.

1. *Liability of Architect for Negligence—Dry Rot Appearing after Work Completed—Duty of Clerk of Works—Subsidiary Agreement Compromising Dispute—No Necessity for Seal.*

A firm, of which the defendant was the sole surviving member, were employed as architects, it being a term of the agreement that a clerk of the works should be employed. Four years after the work was completed dry rot broke out in floors laid over concrete, a large area of which was laid on the ground floor of the new buildings. It was alleged that this defect arose owing to the negligence of the defendant in not seeing that the concrete was properly laid in accordance with the contract. It was also alleged that, in correspondence which passed between the parties after the dispute arose, the defendant, in consideration of the corporation refraining from suing, undertook to put the work right at his own expense. The defendant denied that it was his duty to supervise the laying of the concrete, and alleged that it was the duty of the clerk of the works. He counterclaimed for damages, alleged to have been occasioned by the plaintiffs having in breach of an implied contract appointed an incompetent clerk of the works.

HELD—that while the duty of a clerk of the works under an ordinary building contract was to supervise the details of the work, the laying of a floor such as this could not be regarded as a detail, and that the architect was liable.

HELD, FURTHER—that the defendant was liable under the subsidiary contract, and that for that contract, which was not under seal, sealing was unnecessary.

LEICESTER GUARDIANS *v.* TROLLOPE, 75 J. P. [197—Channell, J.]

**II. BUILDING AND ENGINEERING CON-
TRACTS.**See also No. 1, *supra*.

2. *Engineering Lump Sum Contract—Contractor employed by Local Authority—Windmill, part of Works to be Supplied by Particular Maker—Windmill proving to be Inefficient—Non-Liability of Contractor.*—The plaintiffs, a firm of engineers, contracted to install a

waterworks for the defendants in accordance with specifications and bills of quantities. The water was to be raised by a windmill which, according to the contract, was to be of a particular type and was to be supplied by a particular maker. It was alleged that because of the existence of defects in the windmill the plaintiffs had failed to complete their contract, and thereupon the defendants, in purported exercise of the forfeiture clause in the contract, called upon the plaintiffs to provide an efficient windmill. Thereupon the plaintiffs, treating the contract as at an end, and wrongfully forfeited by the defendants, sued as on a *quantum meruit* for work and labour done.

HELD—that, inasmuch as the defendants had insisted on a particular windmill being supplied by a particular maker, the plaintiffs could not be held responsible for any defects which had made themselves apparent in the mill, and that, therefore, the plaintiffs were entitled to recover such amount as might be found due by an official referee.

Leslie v. Metropolitan Asylums Board ((1896) 68 J. P. 86) and *Mitchell v. Guildford Union* ((1903), 68 J. P. 84) distinguished.

BOWER v. CHAPEL-EN-LE-FRITH RURAL DISTRICT COUNCIL, 75 J. P. 122; 9 L. G. R. 339—Lawrance, J.

On appeal, New trial ordered, 75 J. P. 321; 9 L. G. R. 663—C. A.

3. *Sub-Contractor or Specialist—Quotation of Specialist to Building Owner—Entry of Specialist's Work as "Prime Cost Item"—Building Contractors Held to Contract with Sub-contractor as Agents for Building Owner—Liability of Building Owner in Action by Sub-Contractor.*—Building owners contracted with building contractors for the erection of a building, for the purposes of which certain specialities were to be ordered from stated firms. Amongst the specialities were certain casements. Many months after the head contract was entered into the building owners invited the plaintiffs to quote for the casements according to a specification which provided that the amount of the accepted quotation would be inserted as a "prime cost item" in the building contract; that the plaintiffs would enter into an agreement with the building contractor to execute and complete the casements within a given time under penalty; that the architect of the building owner would have power to vary the work; and that payment for the work should only be made on the certificate of that architect. The plaintiffs having quoted according to this specification, the building owners forwarded the quotation to the building contractors, with a request that they should place the order with the plaintiffs. Subsequently the building contractors informed the plaintiffs that they (the building contractors) had instructions to accept the plaintiffs' estimate for the casements. In an action by the plaintiffs to recover a balance of the price of these casements from the building owners:—

II. Building and Engineering Contracts—Continued.

HELD—that while the contract for the case-ments was *prima facie* a contract with the building contractors, it was also a contract made in fact by the building contractors acting as agents on behalf of the building owners as real principals, because it was to procure something for their benefit, and that on the facts of the case the plaintiffs were entitled to judgment.

Hobbs v. Turner ((1902) 18 T. L. R. 235) followed.

The term "prime cost" in a contract indicates that the item to which it relates will be carried out by somebody other than the contractor himself. Entering an item as a "provisional item" clearly has the effect that the contractor bases his contract upon the sum named being the prime cost of the article. . . . In the case of provisional items the contract made to procure them is in point of fact a contract in which the building owner is the real principal, because, if it is a good contract, he gets the benefit of it; if it is a bad contract, he suffers the loss.

CRITTALL MANUFACTURING CO. v. LONDON [COUNTY COUNCIL AND MARCH, 75 J. P. 203—Channell, J.]

4. *Sewerage Works—Contract in the Form Sanctioned by the Royal Institute of British Architects—Alleged Defective Work—Duty to make Manholes Watertight—Observations of the Court on the True Meaning of clauses 16 and 17 of the above-mentioned Form.* By a contract, dated December 31st, 1908, one Adcock agreed to construct certain sewers and manholes in accordance with specifications and bills of quantities, the contract being similar in form to that sanctioned by the Royal Institute of British Architects. Adcock asserted that he completed the work in accordance with the contract on January 12th, 1910, and gave notice to the architect to that effect. On January 15th Adcock was adjudicated bankrupt, and on February 1st the plaintiff was appointed trustee. On February 5th, 1910, the architect gave notice of certain defects in the manholes, and called upon the plaintiff to remedy them by making them watertight. The notice further stated that unless the defects were so made good the cost of making them good would be deducted from the retention money, pursuant to clause 17 of the contract. The plaintiff sued for a balance alleged to be due in respect of the agreed price of contract work plus extras, and for a declaration that he was entitled to another sum which would become due as retention money. The defendants alleged that the decision of the architect as to defects was final and binding upon both parties (pursuant to clause 16 of the form above mentioned, which provides for defects during the progress of the work), and that upon the true construction of the contract it was the duty of the contractor to make the manholes of the works watertight, and that he should have

selected suitable bricks for the purpose, and they accordingly counterclaimed damages.

HELD—that so far as it was necessary to decide it, clause 16 of the form of contract related to emergency defects arising in course of the work as to which the decision of the architect was final and binding; that clause 17 referred to defects appearing after completion as to which the parties were entitled to the more deliberate judgment of the architect, which judgment, having regard to a later clause, was subject to an appeal to an arbitrator.

HELD, FURTHER—upon the facts, that the architect having approved a sample of the bricks to be used for the manholes the contractor was not to be held responsible because the manholes were not watertight; that the error was in design, not in construction; and that, there having been no reference under clause 17, the Court had jurisdiction to hear the case and the plaintiff was entitled to judgment.

ADCOCK'S TRUSTEE v. BRIDGE RURAL DISTRICT [COUNCIL, 75 J. P. 241—Phillimore, J.]

5. *Sewerage Contract—Arbitration Clause—Construction—Claim for Extras—Staying Proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*—A sewerage contract provided that no claim for extras should be allowed unless submitted to the engineers within a given time; that the engineers should be sole judges as to the method of carrying out the works and the materials to be used in the construction thereof; and that in case of any dispute arising at any time, whether during the progress of the works or after completion, as to certain specified matters not including extras, and as to all other matters therein left to the decision of the engineers, their decision should be final and binding on all parties to the contract.

HELD—that a claim for extras was not within the scope of the arbitration clause, and consequently that an action by the contractor for the amount of the claim ought to be allowed to proceed.

TAYLOR v. WESTERN VALLEYS (MONMOUTH-SHIRE) SEWERAGE BOARD, 75 J. P. 409—C. A.

6. *Specialists for Part of Building Work—Contract of Specialists with Building Contractor or Building Owner.*—Specialists for the supply of steel work for a building held entitled to sue the building owner as the real principal in respect of the goods supplied through the building contractor.

H. YOUNG & CO., LD. v. WHITE, 28 T. L. R. 87 [—Lord Coleridge, J.]

7. *Completion of Work—Certificate by Engineer for Lump Sum—No Detailed Account—Premature Arbitration.*—A contract between a railway company and a quarrymaster for the construction of a siding provided that the company should form the permanent way of the siding and execute certain other work connected therewith,

11. Building and Engineering Contracts—Continued.

and that on completion of the work the quarrymasters should pay to the company the cost of the labour incurred and interest on the cost of the permanent way, etc., as the amount of such cost and interest should be determined by the company's engineer. The railway company brought an action against the quarrymaster for payment of (1) the balance of a lump sum certified by the engineer as the amount expended on wages, and (2) interest on a lump sum certified by him as the value of the materials. The defender maintained that the sums certified were excessive; that no details were ever furnished to him; and that he never was afforded an opportunity of being heard.

HELD—that the action was premature, and that the company had failed to make a proper demand under the contract in respect that while the engineer was no doubt made the final judge of the amount if the parties failed to agree, that did not absolve the company from furnishing to the defender a properly detailed account.

NORTH BRITISH RY. CO. v. WILSON, [1911]
[S. C. 730; 48 Sc. L. R. 620—Ct. of Sess.]

BUILDING SOCIETIES.

	COL.
I. RULES.	47
II. WINDING-UP.	48
III. IN GENERAL.	48
[No paragraphs in this vol. of the Digest.]	

I. RULES.

1. *Advanced Member—Mortgage to Society—Rules of Society—Default by Mortgagor—Mortgagee in Possession—Trust to apply Rents in Payment of Mortgage Debt—Surplus Rents—Statutory Accounts—Acknowledgment of Mortgagor's Title—Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 40—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 7.*—A member of a building society mortgaged leaseholds to the society to secure an advance of £400 on her shares repayable with interest by monthly instalments extending over ten years. The rules of the society provided that when the claims of the society upon any mortgaged property had been satisfied the statutory receipt should be indorsed upon the mortgage at the expense of the mortgagor. The deed conveyed the property to the society upon trust to permit the mortgagor to receive the rents until default in payment of any instalment and, upon default, to enter into possession of the rents and to apply the same in payment of all sums due from the mortgagor and to pay the balance (if any) to the mortgagor; the deed also contained a trust for sale.

In 1887 the mortgagor made default and the society went into possession and managed the

property, treating it in their books as a mortgage transaction, and by 1902 all sums payable under the deed were satisfied. After 1902 the society entered the rents to a "suspense account" in their ledger until 1910, when the society was ordered to be wound up; the same year the lease of the property expired. In the winding-up the mortgagor claimed the surplus rents standing to the credit of the suspense account on the ground that the society were trustees thereof for her and that the Statute of Limitations did not apply:—

HELD—that the deed though in form a trust was in substance a mortgage, that the Statute of Limitations commenced to run when the society took possession in 1887, and therefore that the claim of the mortgagor was barred.

In re Alison ((1879) 11 Ch. D. 284) followed.

HELD, ALSO—that the annual statutory accounts which the society published pursuant to sect. 40 of the Building Societies Act, 1874, and in which the leaseholds were included in the properties of which the society were in possession as mortgagees, were not acknowledgments of the mortgagor's title within sect. 7 of the Real Property Limitation Act, 1874, so as to preclude the operation of that section.

Wilson v. Walton and Kirkdale Permanent Building Society ((1903) 19 T. L. R. 408) followed on this point.

IN RE METROPOLIS AND COUNTIES PERMANENT [INVESTMENT BUILDING SOCIETY, GATFIELD'S CASE, [1911] 1 Ch. 698; 80 L. J. Ch. 387; 104 L. T. 382—Neville, J.]

2. *Borrowing Powers—Borrowing for Purposes of Banking Business—Rights of Shareholders and Depositors.*—The rules of a building society contained a statement of the objects of the society and that was followed by a power to borrow which was silent as to the purposes for which the power might be exercised.

HELD—that such power should be construed as limited by implication to the objects of the society as declared by its rules, and that the rule, although it gave an unlimited power of borrowing to the directors, was not *ultra vires*; but:—

HELD, ALSO—that the exercise of this power for the purpose of conducting a banking business in all its branches, including the discounting of bills, was *ultra vires* and illegal, and that the claims of depositors having notice of such illegality were postponed to those of creditors of the society and of unadvanced members.

IN RE BIRKBECK PERMANENT BENEFIT BUILDING SOCIETY, [1911] W. N. 226; 28 T. L. R. [46—Neville, J.]

II. WINDING-UP.

See Nos. 1, 2, *supra*.

III. IN GENERAL.

[No paragraphs in this vol. of the Digest.]

"BUILDINGS."

See LOCAL GOVERNMENT ; METROPOLIS.

BURIAL AND CREMATION.**I. BURIAL GROUNDS.**

[No paragraphs in this vol. of the Digest.]

II. CHURCHYARDS.

[No paragraphs in this vol. of the Digest.]

III. DISUSED BURIAL GROUNDS.

[No paragraphs in this vol. of the Digest.]

IV. EXHUMATION OF REMAINS.

[No paragraphs in this vol. of the Digest.]

BUTTER.

See FOOD AND DRUGS.

BYE-LAWS.

See COMPANIES ; FISHERIES ; HIGHWAYS ; LOCAL GOVERNMENT ; MARKETS AND FAIRS ; METROPOLIS ; OPEN SPACES ; PUBLIC HEALTH ; RAILWAYS ; TRAMWAYS ; WEIGHTS AND MEASURES.

CABS.

See METROPOLIS ; STREET TRAFFIC.

CANADA.

See DEPENDENCIES AND COLONIES.

CANALS.

See HIGHWAYS ; RAILWAYS AND CANALS.

CAPE COLONY.

See DEPENDENCIES AND COLONIES.

CAPITAL AND INCOME.

See SETTLEMENTS ; TRUSTS ; WILLS.

CAPTURE.

See CONFLICT OF LAWS ; INSURANCE.

CARDS.

See GAMING AND WAGERING.

CARGO.

See SHIPPING AND NAVIGATION.

CARRIAGE OF PASSENGERS.

See NEGLIGENCE ; RAILWAYS.

CARRIERS.

COL.

I. RIGHTS AND LIABILITIES . . . 50

[No paragraphs in this vol. of the Digest.]

II. RAILWAYS.**(a) Passengers' Luggage . . . 50**

[No paragraphs in this vol. of the Digest.]

(b) Carriage of Animals . . . 50

[No paragraphs in this vol. of the Digest.]

(c) Carriage of Goods . . . 50**I. RIGHTS AND LIABILITIES.**

[No paragraphs in this vol. of the Digest.]

II. RAILWAYS.

See also RAILWAYS, I. (b) ii.

(a) Passengers' Luggage.

[No paragraphs in this vol. of the Digest.]

(b) Carriage of Animals.

[No paragraphs in this vol. of the Digest.]

(c) Carriage of Goods.

1. *Railway Company's Steamer — Bill of Lading — Conditions whether Just and Reasonable — Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7 — Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 31 — Manchester, Sheffield, and Lincolnshire Railway (Steamboats) Act, 1864 (27 & 28 Vict. c. cccxx), s. 2 — Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 16 — Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 59 ; Schedule.] — A railway company which owns steam vessels and which by its private Act has adopted Part IV. of the Railways Clauses Act, 1863 (relating to steam vessels), is bound by the provisions of sect. 7 of the Railway and Canal Traffic Act, 1854. A special contract made by such railway company*

11. Railways *Continued.*

for the carriage of goods must therefore, whether the carriage is partly by its railway and partly by its steamers, or wholly by its steamers, be just and reasonable within the meaning of sect. 7. Where no alternative rate is given, a bill of lading which exempts the railway company from all liability for damage due to their own negligence is not just and reasonable within sect. 7.

JENKINS *v.* GREAT CENTRAL RY. CO., [1912]
[1 K. B. 1; [1911] W. N. 216; 81 L. J. K. B.
24; 28 T. L. R. 61—Lord Coleridge, J.

CEMETERY.

See BURIAL AND CREMATION.

CERTIORARI.

See CROWN PRACTICE.

CEYLON.

See DEPENDENCIES AND COLONIES.

CHAMPERTY.

See ACTION; SOLICITORS, No. 22.

CHANNEL ISLANDS.

See DEPENDENCIES AND COLONIES.

CHARGING ORDER.

See SOLICITORS, V. (c).

CHARITIES.

CCL.

I. ADMINISTRATION OF CHARITABLE TRUSTS.

- (a) Generally 52
[No paragraphs in this vol. of the Digest.]
- (b) Schemes 52

II. CHARITABLE GIFTS.

CCL.

- (a) Generally 53
 - (b) Mortmain Acts 55
 - (c) Uncertainty 55
- [No paragraphs in this vol. of the Digest.]

See also INCOME TAX, No. 11; WILLS,
No 19, 40.

I. ADMINISTRATION OF CHARITABLE TRUSTS.

(a) Generally.

[No paragraphs in this vol. of the Digest.]

(b) Schemes.

1. *Practice—Leave to Intervene and Attend Proceedings—Time of Intervention.*—In 1762 land was bought for a burial ground for the inhabitants of the parish of St. George, Hanover Square. Building leases were granted of the unconsecrated part of land, and, as they fell in, fresh leases were granted, so that the property was now worth over £2,000 a year. The council of the city of Westminster brought an action against the rector and churchwardens of the parish for a declaration that the premises were not Church property, and that the power of the vestry of the parish to administer the income thereof had been transferred to the council by the London Government Act, 1899. The House of Lords decided that the land was Church property, and that the power to direct the application of the income did not pass to the council; but their Lordships expressly refrained from deciding for what purposes the income was applicable (*Westminster Corporation v. Rector and Churchwardens of St. George, Hanover Square*, [1910] A. C. 225).

The rector and churchwardens took out a summons for the establishment of a scheme for the administration of the trusts of the charity, to which the Attorney-General was the only respondent. The council applied by summons for liberty to intervene and attend the proceedings for settlement of a scheme.

HELD—that the application was premature and ought not to be acceded to.

Decision of Warrington, J., affirmed.

IN RE HYDE PARK PLACE CHARITY, [1911] 1
[Ch. 678; 80 L. J. Ch. 593; 104 L. T. 701; 75
J. P. 361; 9 L. G. R. 887—C. A.]

2. *Church of England School—Grant of Land for the Purposes of the School Sites Acts, 1841 (4 & 5 Vict. c. 38), and 1844 (7 & 8 Vict. c. 37)—Discontinuance of Week-day School—Continued Use as Sunday School—Use for Some Purposes of the Act—Settlement of Scheme—Provision against Risk of Reverter Clause Taking Effect—Education Act, 1902 (2 Edw. 7, c. 42), ss. 8 and 9.*—In settling a scheme in accordance with a trust for providing and carrying on a Church of England school, great care must be taken that the provisions of the scheme do not interfere with the character of the trust as provided by the trust deed.

A scheme provided that the buildings might be used for such educational purposes not

I. Administration of Charitable Trusts—Continued.

connected with the Established Church, or any creed or denomination as may be ascertained and allowed."

HELD—that these words must be struck out as contravening the purposes of the trust, and that, applying the *cy-près* doctrine, the buildings might "be used or let on week-days for such purposes other than those hereinafter specified (but so as not to interfere with the true character of the trust)," so that the trustees might use the moneys obtained in the event of such letting for the purposes of the trust.

HELD, FURTHER—that, having regard to the decision of Warrington, J., in *Attorney-General v. Shadwell*, [1910] 1 Ch. 92, every care should be taken that the provisions of the scheme should so far as possible minimise the risk of the reverter clause taking effect.

ATTORNEY-GENERAL (GLAMORGAN COUNTY [COUNCIL]) *v.* PRICE, 75 J. P. 566; 56 Sol. Jo. 14—Eady, J.

3. Cy-près — Gift to Named Institution — Institution Ceasing at Death of Testatrix — General Charitable Intention.—A testatrix bequeathed her property to the Ormond Home for Nurses, an institution founded and controlled solely by herself for nursing the working classes. The institution charged small fees, payable by instalments, and was entirely self-supporting. On the death of the testatrix the work ceased to be carried on, and the premises were disposed of.

HELD—that the bequest was for the continuance of the work carried on by the home, which was a charitable work, and was therefore a good charitable gift, for the purposes of which there must be a scheme *cy-près*.

IN RE WEBSTER, PEARSON *v.* WEBSTER, 56 Sol. [Jo. 90—Joyce, J.

II. CHARITABLE GIFTS.

(a) Generally.

4. Bequest—Charitable Purposes in Existence at Testator's Death—Specific Purposes ceasing to Exist before Distribution of Estate—Cy-près.—Where a gift is left by will to trustees to apply the income for charitable purposes which are in existence at the death of the testator, but the specific purposes cease to exist before it is paid over, the gift is applicable to charitable purposes *cy-près*.

In *re Slevin* ([1891] 2 Ch. 236) applied.

IN RE GEIKIE, ROBSON *v.* PATERSON, 27 T. L. R. [484—Neville, J.

5. Bequest—Gift to Angling Society to Apply Income for Restocking River—Perpetuity.—A testator bequeathed a sum of £200 to an angling society on condition that the income should be applied for the purpose of restocking the waters fished by them.

HELD—that the gift was not a good charitable

bequest, and that it was void as tending to a perpetuity.

IN RE CLIFFORD, MALLAM *v.* MCFIE, [1912] 1 Ch. 29; 28 T. L. R. 57; 56 Sol. Jo. 91—Eady, J.

6. Will—"Charitable or Religious Purposes"—Discretion of Trustees as to Application of Trust Fund—Validity.—By his will a testator devised and bequeathed the residue of his property real and personal to W., the Bishop of Ossory, or other the bishop of that diocese for the time being, and F., the incumbent of the parish of Carlow, or other the incumbent of that parish for the time being, upon trust to pay the interest, dividends or annual proceeds of his residuary estate to his three sisters, and the survivors and survivor of them for life, "and from and after the decease of such survivor in trust, to apply and dispose of such interest, dividends, or annual proceeds from time to time for the use of the Protestant Orphan Society of the county of Carlow, or for or towards the relief and benefit of such poor and necessitous Protestant widows and widowers resident in the county of Carlow, or to both of such objects or purposes, or to such other merely and purely charitable or religious purpose or purposes for the benefit of or advantage of members of the Church of Ireland, or other Protestant Denomination within the said county of Carlow, in such shares and proportions, and in such manner, as my said trustees shall in their uncontrollable discretion think fit."

HELD—that the testator in the words "charitable or religious" had not shown an intention to enable the trustees to apply the gift to purposes religious but not charitable and that the gift was a valid charitable gift.

In *re Davidson*, *Minty v. Bourne* ([1909] 1 Ch. 567) distinguished.

IN RE SALTER, REA *v.* CROZIER, [1911] 1 I. R. [289; 45 I. L. T. 174—Barton, J., Ireland.

7. Will—"Purposes of Healthy Recreation"—Gift for Public Purposes for Benefit of Particular Town—Overriding Charitable Purpose—Inclusive of Objects not Charitable.—A testator directed that the balance of the income derived from his estate should be applied by his trustees "for the purpose of fostering, encouraging, and providing the means of healthy recreation, including the teaching of singing in classes or choruses, for the residents of the town of Portadown and the surrounding districts, and for the purpose of providing music and instruments (in so far as my trustees think advisable) for the town band, in such a manner and form as my trustees in their absolute discretion consider best, but in no case shall my trustees pay away any moneys derived out of my estate for prizes for football or rowing for speed."

HELD—that the direction to the trustees as to the application of the balance or residue of the income of the trust estate constituted a valid charitable devise and bequest, being for a charitable and public purpose.

HELD, ALSO—that the direction as to the town band was not a separate gift for the benefit of

11. Charitable Gifts—Continued.

the land, but was a particular way of carrying out a general public and charitable purpose for the benefit of the town and neighbourhood.

SHILLINGTON v. PORTADOWN URBAN DISTRICT COUNCIL, [1911] 1 L. R. 247—Barton, J., Ireland.

(b) Mortmain Acts.

8. Bequest by English Testator of Mortgages on Real Estate in Ontario—Validity—Charitable Uses Act, 1736 (9 Geo. 2, c. 36).—A bequest to charity by a person domiciled in England of mortgages in fee on land in Ontario, being a disposition by will of an interest in land in Ontario forbidden by the law of that province, is invalid.

Decision of Eady, J. ([1910] 2 Ch. 333; 79 L. J. Ch. 720; 103 L. T. 127; 26 T. L. R. 516; 54 Sol. Jo. 582) affirmed.

IN RE HOYLES, ROW v. JAGG, [1911] 1 Ch. 179; [80 L. J. Ch. 274; 103 L. T. 817; 27 T. L. R. 131; 55 Sol. Jo. 169—C. A.

See S. C. under CONFLICT OF LAWS (a).

9. Bequest to Chapel Building Fund—Reversionary Bequest to Same—Immediate Bequest held Invalid in 1876—Right to Reversionary Bequest—Res judicata—Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42).—By a will proved in 1874 an immediate bequest was given to a chapel building fund and reversionary bequest to the same fund after the death of the testator's widow. The executors of the will were advised that the bequest was contrary to the provisions of the then existing Statutes of Mortmain, and on the application of the residuary legatees, the treasurer of the fund being represented, an order was made in chambers, dated May 8th, 1876, by which the amount of the immediate bequest was declared to fall into residue. The testator's widow died in 1909.

HELD—that the present treasurer of the fund might claim the reversionary bequest, inasmuch as the fund had other objects than the purchase of land to which the money might be devoted without transgressing the Mortmain and Charitable Uses Act, 1888.

HELD, FURTHER—that the immediate bequest might have been claimed upon like grounds, and that the order of 1876, having been made in respect of that bequest only and under an erroneous impression, did not operate as an estoppel, by *res judicata*, to the present claim.

IN RE SURFLET'S ESTATE, RAWLINGS v. SMITH, [105 L. T. 582; 56 Sol. Jo. 15—Parker, J.

(c) Uncertainty.

[No paragraphs in this vol. of the Digest.]

CHARTERPARTY.

See SHIPPING AND NAVIGATION.

CHEQUES.

See BANKERS AND BANKING; CONFLICT OF LAWS.

CHILDREN.

See BASTARDY; CRIMINAL LAW AND PROCEDURE, Nos. 59, 79, 82; EDUCATION; FACTORIES AND WORKSHOPS; INFANTS.

CHOSES IN ACTION.

See BANKRUPTCY, No. 29; PARTNERSHIP, No. 2; SETTLEMENTS, No. 7.

CHURCHES AND CHURCH-WARDENS.

See ECCLESIASTICAL LAW.

CHURCHYARD.

See BURIAL AND CREMATION; ECCLESIASTICAL LAW.

CLEARING HOUSE.

See BANKERS AND BANKING.

CLERGY.

See ECCLESIASTICAL LAW.

CLERK OF THE PEACE.

See PUBLIC OFFICERS.

CLUBS.

[No paragraphs in this vol. of the Digest.]

COAL.

See MINES.

COINS AND COINAGE.

See CRIMINAL LAW.

COLLECTING SOCIETIES.

See INDUSTRIAL SOCIETIES.

COLLEGES.

See CHARITIES; EDUCATION.

COLLISIONS AT SEA.

See SHIPPING AND NAVIGATION.

COMBINATIONS AFFECTING TRADE.

See TRADE AND TRADE UNIONS.

COMMISSION.

See AGENCY; COMPANIES; STOCK EXCHANGE.

COMMISSION TO EXAMINE WITNESSES.

See EVIDENCE; PRACTICE AND PROCEDURE.

COMMONS.

See also HIGHWAYS, No. 5.

1. *Commonable Animals—Sheep—Duty of Adjoining Owner to Maintain Fence to Keep Out Commonable Animals.*—Where the owner of land adjoining a common is bound to maintain fences which are sufficient to keep out the ordinary commonable animals, he is not bound to fence against animals of a recently introduced breed which are of a peculiarly wandering disposition or specially addicted to jumping.

Decision of Div. Ct. ([1911] 1 K. B. 649; 103 L. T. 806; 27 T. L. R. 137; 55 Sol. Jo. 155) affirmed on somewhat different grounds.

COAKER v. WILLCOCKS, [1911] 2 K. B. 124; [80 L. J. K. B. 1026; 104 L. T. 769; 27 T. L. R. 357—C. A.]

2. *Metropolitan Common—Mitcham Common—Regulations of Conservators—Breach—Right to Grant Preferential Treatment for Recreation.*—The Conservators of Mitcham Com

made, by virtue of a by-law, a regulation that "for the safety of the public and the preservation of the turf, no one shall play golf . . . unless accompanied by a caddie."

HELD—that the respondents who played golf on the common without being accompanied by a caddie were liable to a penalty for breach of the by-law.

If the conservators of a common have not funds to lay out proper courses for games, and clubs are willing to go to the initial and continuous expense necessary to make and maintain them, there may be circumstances in which the conservators may, for the sake of all players, give some preference to those who will make and keep up the playgrounds. But the preference must be so temporary or so discontinuous as to leave substantial and ample opportunities to the non-preferred, and not unduly to interfere with the non-playing public.

The conservators cannot by requiring licences or permits to be taken out create a preference indirectly which cannot be justified directly.

MITCHAM COMMON CONSERVATORS v. COX, [1911] 2 K. B. 854; 80 L. J. K. B. 1188; 104 L. T. 824; 75 J. P. 471; 27 T. L. R. 492; 9 L. G. R. 843—Div. Ct.

3. *Rights of Common—Turbary and Estovers—Ancient Message—Pulling Down—New House—Continuance of Old Rights.*—Where rights of common of turbary and estovers are appurtenant to an ancient house, the mere fact that such house has been pulled down does not necessarily operate as an abandonment of those rights of common. If no greater burden is imposed upon the lands over which the rights are enjoyed, the rights can be enjoyed as appurtenant to a new house erected in continuance of the ancient house, and it is not necessary that the new house should occupy precisely the same site or any part of the same site as the previous one. Whether or not a new house is in continuance of the ancient house and of the rights appurtenant thereto is a question of fact.

ATTORNEY-GENERAL v. REYNOLDS, [1911] 2 [K. B. 888; 80 L. J. K. B. 1073; 104 L. T. 852—Hamilton, J.]

COMMONWEALTH OF AUSTRALIA.

See DEPENDENCIES AND COLONIES.

COMMUTATION OF TITHES.

See ECCLESIASTICAL LAW.

COMPANIES.

	COL.
I. AMALGAMATION	61
[No paragraphs in this vol. of the Digest.]	
II. ARTICLES OF ASSOCIATION.	
(a) General	61
(b) Alteration	61
III. ASSOCIATIONS NOT FOR PROFIT	61
[No paragraphs in this vol. of the Digest.]	
IV. AUDITORS	61
V. BORROWING	62
[No paragraphs in this vol. of the Digest.]	
VI. CAPITAL	62
VII. COMMISSION ON ACCEPTANCE OF SHARES	62
[No paragraphs in this vol. of the Digest.]	
VIII. CONTRACTS.	
(a) Pre-incorporation Contracts	62
[No paragraphs in this vol. of the Digest.]	
(b) Provisional Contracts	62
[No paragraphs in this vol. of the Digest.]	
(c) <i>Ultra vires</i>	62
[No paragraphs in this vol. of the Digest.]	
IX. DEBENTURES, MORTGAGES, AND CHARGES.	
(a) General	63
(b) Debenture-holders' Action	65
(c) Floating Security	65
(d) Priority	65
(e) Registration	67
(f) Validity	67
X. DEEDS OF ARRANGEMENT	68
[No paragraphs in this vol. of the Digest.]	
XI. DEFUNCT COMPANY	68
XII. DIRECTORS.	
(a) General	68
(b) Appointment	69
(c) Fiduciary Relation	69
(d) Misfeasance	69
(e) Prospectus	69
[No paragraphs in this vol. of the Digest.]	
(f) Powers	72
(g) Qualification	72
[No paragraphs in this vol. of the Digest.]	
(h) Quorum	73
(i) Remuneration	73
[No paragraphs in this vol. of the Digest.]	
(k) Vacation of Office	73
[No paragraphs in this vol. of the Digest.]	
XIII. DIVIDENDS.	
(a) General	73
[No paragraphs in this vol. of the Digest.]	
(b) Payment out of Capital	73
[No paragraphs in this vol. of the Digest.]	
(c) Preference Shares	73
[No paragraphs in this vol. of the Digest.]	
XIV. FLOTATION AND INCORPORATION	74
[No paragraphs in this vol. of the Digest.]	
XV. MANAGEMENT	74
[No paragraphs in this vol. of the Digest.]	

	COL.
XVI. MEETINGS.	
(a) General	74
(b) Extraordinary	74
(c) Special Resolution	74
(d) Separate class meeting	75
XVII. MEMORANDUM OF ASSOCIATION.	
(a) General	75
(b) Alteration	76
XVIII. NOTICES	76
XIX. PROMOTERS	77
XX. PROSPECTUS.	
(a) General	77
(b) Liability of Directors	77
[No paragraphs in this vol. of the Digest.]	
(c) Particulars Required	77
XXI. PROXIES	78
[No paragraphs in this vol. of the Digest.]	
XXII. RECEIVERS	78
XXIII. RECONSTRUCTION	79
[No paragraphs in this vol. of the Digest.]	
XXIV. REDUCTION OF CAPITAL.	
(a) General	79
(b) Loss of Capital	80
[No paragraphs in this vol. of the Digest.]	
(c) Power to Reduce	80
[No paragraphs in this vol. of the Digest.]	
(d) Return to Shareholders of Capital not required	80
XXV. REGISTER OF MEMBERS	81
XXVI. REGISTRATION	81
XXVII. SALE OF UNDERTAKING	81
XXVIII. SECRETARY	82
[No paragraphs in this vol. of the Digest.]	
XXIX. SHAREHOLDERS	82
XXX. SHARES.	
(a) General	82
(b) Allotment	82
(c) Calls	82
(d) Certificate	83
[No paragraphs in this vol. of the Digest.]	
(e) Forfeiture	83
(f) Issued at a Discount	83
[No paragraphs in this vol. of the Digest.]	
(g) Issued not for Cash	83
[No paragraphs in this vol. of the Digest.]	
(h) Transfer	83
[No paragraphs in this vol. of the Digest.]	
(i) Underwriting Agreements	83
XXXI. UNREGISTERED COMPANIES	83
XXXII. VOTING	84
[No paragraphs in this vol. of the Digest.]	
XXXIII. WINDING-UP.	
(a) General	84
(b) Assets	84
[No paragraphs in this vol. of the Digest.]	
(c) Compulsory Order	84
[No paragraphs in this vol. of the Digest.]	

XXXIII. WINDING-UP—*Continued.*

COL.

- (d) Contributories 84
(e) Creditors 85

[No paragraphs in this vol. of the Digest.]

- (f) Examination 85
(g) Fraudulent Preference 86

[No paragraphs in this vol. of the Digest.]

- (h) Liquidators 86
(i) Petition 86

[No paragraphs in this vol. of the Digest.]

- (k) Practice 86
(l) Proof 86

[No paragraphs in this vol. of the Digest.]

- (m) Reconstruction 86
(n) Surplus Assets 86

[No paragraphs in this vol. of the Digest.]

XXXIV. VOLUNTARY WINDING-UP.

- (a) General 87
[No paragraphs in this vol. of the Digest.]

- (b) Liquidators 87
[No paragraphs in this vol. of the Digest.]

- (c) Reconstruction 87
[No paragraphs in this vol. of the Digest.]

- (d) Supervision Orders 87
[No paragraphs in this vol. of the Digest.]

- (e) Surplus Assets 87

See also COUNTY COURTS, No. 4; EXECUTION, No. 1; FOOD, No. 11; INCOME TAX, Nos. 5, 6; PRACTICE, Nos. 3, 23.

I. AMALGAMATION.

[No paragraphs in this vol. of the Digest.]

II. ARTICLES OF ASSOCIATION.

See also No. 22, *infra*.

(a) General.

See No. 33, *infra*.

(b) Alteration.

See No. 2, *infra*.

III. ASSOCIATIONS NOT FOR PROFIT.

[No paragraphs in this vol. of the Digest.]

IV. AUDITORS.

1. *Examination of Books—Extent of Obligation.*—The plaintiff sued the defendants to recover damages on the allegation that they had been negligent in the performance of their duties as accountants in the investigation of the accounts of a business in which he was investing money.

HELD—that the plaintiff had failed to show that the alleged negligence had caused the loss he had sustained.

Although it is not the duty of accountants to take stock in auditing the accounts of a business, they may well call for explanations of particular items in the stock sheets.

Decision of Lord Alverstone, C.J. (27 T. L. R. 269) affirmed.

MEAD *v.* BALL, BAKER & Co., 28 T. L. R. 81
[—C. A.]

V. BORROWING.

[No paragraphs in this vol. of the Digest.]

VI. CAPITAL.

See also REVENUE, No. 14.

2. *Increase—Resolution Empowering Directors to Increase Capital—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 12.]—Articles of association provided (article 53) that “the company in general meeting may from time to time . . . increase its capital by the creation of new shares.” Article 59 provided that “any new shares from time to time to be created may from time to time be issued with any such guarantee or any such right of preference . . . over any other shares previously issued . . . or at such a premium, or with such deferred rights, as compared with any shares previously issued or then about to be issued, or subject to any such conditions or provisions, and with any such right, or without any right, of voting, and generally on such terms as the company may from time to time by resolution of a general meeting declare.” At extraordinary general meetings of the company certain special resolutions were passed, among them one substituting the words “by resolution of the directors” for the words “general meeting” in article 53. Subsequently the directors passed a resolution to increase the company’s capital by the creation of 125,000 new shares of £1 each.

HELD—that article 59 must be read with article 53, and that the new shares could not be issued without the sanction of a resolution of a general meeting of the company as required by article 59.

Decision of C. A. ([1911] 1 Ch. 73; 80 L. J. Ch. 111; 103 L. T. 616; 27 T. L. R. 61; 55 Sol. Jo. 44; 18 Manson, 86) affirmed.

KOFFYFONTEIN MINES, LD. *v.* MOSELY, [1911]
[A. C. 409; 80 L. J. Ch. 668; 105 L. T. 115; 27 T. L. R. 501; 55 Sol. Jo. 551—
H. L.]

3. *Reorganisation of Share Capital—Petition—Advertisement—Companies Consolidation Act, 1908* (8 Edw. 7, c. 69), s. 45.]—It is not necessary to advertise a petition for reorganisation of share capital.

IN RE ASHANTI DEVELOPMENT, LD., [1911]
[W. N. 144; 27 T. L. R. 498—Eve, J.]

VII. COMMISSION ON ACCEPTANCE OF SHARES.

[No paragraphs in this vol. of the Digest.]

VIII. CONTRACTS.

See Nos. 13, 16, *infra*.

(a) Pre-incorporation Contracts.

[No paragraphs in this vol. of the Digest.]

(b) Provisional Contracts.

[No paragraphs in this vol. of the Digest.]

(c) Ultra Vires.

[No paragraphs in this vol. of the Digest.]

IX. DEBENTURES, MORTGAGES, AND CHARGES.

See also Nos. 37, 44, *infra*.

(a) General.

4. *Chartered Company — Mortgage — Land Situated Abroad — Exclusive Licence — Clog on Equity of Redemption.*—The respondents, a chartered company, contracted, "in consideration of the assistance rendered and to be rendered" by the appellants, to grant to the appellants an exclusive licence to work all diamondiferous ground in practically the whole of the respondents' territories in South Africa. At that date the respondents owed the appellants £112,000, and it was agreed that in lieu of repayment of this, and of a proposed further advance of £100,000, debentures should be issued as a floating charge on all the respondents' property. These debentures were issued, but had all long ago been redeemed. On an application by the respondents to have it declared that the agreement purporting to grant an exclusive licence was void :—

HELD on a construction of this agreement—that the contract of the parties in reference to the granting of the licence to work the diamondiferous land and as to the issue of the debentures were separate agreements, each independent of the other, and that the former contract remained valid and binding unaffected by the redemption.

Decision of C. A. ([1910] 2 Ch. 502; 80 L. J. Ch. 65; 103 L. T. 4; 26 T. L. R. 591; 54 Sol. Jo. 679) reversed.

DE BEERS CONSOLIDATED MINES, LD. v. [BRITISH SOUTH AFRICA CO., [1911] W. N. 245; 28 T. L. R. 114; 56 Sol. Jo. 175—H. L.

5. *Debentures Guaranteed — Winding-up of Guarantor Society—Release of Guarantor—Arrangement or Compromise — Power of Majority of Debenture-holders to Bind Minority.*—A trust deed securing debentures of the defendant company provided that they should be guaranteed by the L. G. A. and T. Society, Ltd., the society being trustee for the debenture-holders. It also provided that a general meeting of debenture-holders should have power by extraordinary resolution to assent to any arrangement or compromise proposed to be made between the company and the debenture-holders if it were such as the Court would have jurisdiction to sanction if the company were being wound up and the requisite majority of the debenture-holders had agreed to it. The L. G. A. and T. Society being now in the course of voluntary winding-up under supervision, the debenture-holders at duly held meetings passed by the requisite majority resolutions releasing the L. G. A. and T. Society, appointing new trustees, increasing the interest on the debentures, and discontinuing a sinking fund established under the deed.

HELD—that the resolutions were valid and binding on all the debenture-holders, as being for an arrangement or compromise such as

the Court had jurisdiction to sanction in a winding-up.

SHAW v. ROYCE, LD., [1911] 1 Ch. 138; 80 L. J. Ch. 163; 103 L. T. 712; 55 Sol. Jo. 188; 18 Manson, 159—Warrington, J.

6. *Covenant to Pay off "On or after January 1st, 1898"—Debentures to be Paid Off being Selected by Ballot—Repugnancy.*—A company issued debentures, which they covenanted to pay off "on or after January 1st, 1898," the debentures to be paid off being selected by ballot, and six months' notice being given to the holders thereof. The company contended that the debentures were repayable after January 1st, 1898, only after a ballot had been held, and six months' notice had been given to the holders of the drawn debentures.

HELD—that inasmuch as the covenant created a liability to pay on or after the date specified upon demand, the clause seeking to limit its operation to such debentures as should be drawn by ballot was void for repugnancy.

IN RE TEWKESBURY GAS CO., LD., TYSOE v. [THE COMPANY, [1911] 2 Ch. 279; 80 L. J. Ch. 590; 105 L. T. 300; 27 T. L. R. 511; 55 Sol. Jo. 616; 18 Manson, 301—Parker, J.

AFFIRMED ON APPEAL—[1912] 1 Ch. 1; [1911] W. N. 213; 80 L. J. Ch. 723; 105 L. T. 569; 28 T. L. R. 40; 56 Sol. Jo. 71—C. A.

7. *Construction—Inadmissibility of Propectus to explain Meaning of Debenture.*—In determining a question as to the construction of a debenture the Court cannot refer to the prospectus pursuant to which the debenture was issued.

In re Chicago and North West Granaries Co. ([1898] 1 Ch. 263) followed.

IN RE TEWKESBURY GAS CO., LD., TYSOE v. [THE COMPANY, [1911] 2 Ch. 279; 80 L. J. Ch. 590; 105 L. T. 300; 27 T. L. R. 511; 55 Sol. Jo. 616; 18 Manson, 301—Parker, J.

AFFIRMED ON APPEAL—[1912] 1 Ch. 1; [1911] W. N. 213; 80 L. J. Ch. 723; 105 L. T. 569; 28 T. L. R. 40; 56 Sol. Jo. 71—C. A.

8. *Trust Deed—Remuneration of Trustees—Quantum—Period—Lien.*—B debenture stock issued by the above company was secured by a trust deed (called the B security) on the general assets and on the site of a hotel, with a "primary trust for conversion" when the B security became enforceable. Clause 18 provided that the B trustees should hold the moneys to arise under the primary trust for conversion upon trust that they should thereout in the first place pay or retain their costs and expenses "including the remuneration of the B trustees" and should apply the residue in payment of the B stockholders, and should pay the surplus (if any) to the company. Clause 34 provided that the company should pay the B trustees a fixed remuneration per annum to continue payable

IX. Debentures, Mortgages, and Charges—*Continued.*

until the trusts of the B security should be finally wound up and whether or not a receiver should be appointed or the trusts should be administered by the Court. The B security became enforceable and a receiver was appointed in a B stockholder's action. This receiver was superseded by a receiver appointed in an action by the trustees of a prior lien security, to which action the B trustees were parties, and in which their security was established. The hotel was actually sold by the prior lien trustees, the entire purchase-money being received and paid by them into Court in pursuance of an order in the prior lien action. The B trustees joined in the conveyance. After discharging the prior lien a considerable surplus was left in Court for the B stockholders.

HELD—that the B trustees were entitled to their fixed contractual remuneration under clause 34 until the trusts of the B security were finally wound up, and under clause 18 to a lien on the surplus proceeds of sale in Court in priority to the B stockholders.

Debenture Corporation, Ltd. v. Uttoxeter Brewery, Ltd. (noted in Palmer's Company Precedents, 10th ed., pt. iii., p. 737) followed on the latter point.

In re Acles, Ltd. ([1902] W. N. 164) distinguished.

IN RE PICCADILLY HOTEL, LD., PAUL v. PICCADILLY HOTEL, LD., [1911] 2 Ch. 534; 56 Sol. Jo. 52—Eady, J.

9. Arrangement with Debenture-holders — Power to Sanction Arrangement Changing Terminal Debentures into Perpetual Debenture Stock — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120.—The power given to the Court by sect. 120 of the Companies (Consolidation) Act, 1908, to sanction a compromise or arrangement between a company and its creditors, or between the company and its members, gives the Court jurisdiction to sanction an arrangement whereby terminable debentures or debenture bonds are converted into perpetual debenture stock.

IN RE SHANDON HYDROPATHIC CO., LD., [1911] S. C. 1153; 48 Sc. L. R. 943—Ct. of Sess.

(b) Debenture-holders' Action.

See No. 44, *infra*.

(c) Floating Security.

See Nos. 10, 11, 15, *infra*.

(d) Priority.

See also No. 8, *supra*.

10. Garnishee Order Nisi—Notice by Debenture-holder—No Appointment of Receiver.—The plaintiff, a creditor of the defendant company, having obtained judgment against them, obtained on April 24th, 1909, a garnishee order *nisi* against the company's bankers attaching the sum of £61. On May 14th following the

claimant, who was a debenture-holder of the defendant company, and who had given them notice to pay off the debenture, gave notice to the plaintiff, the company, and the bank, claiming to be entitled to the sum which the plaintiff had garnisheed. The claimant did not, however, obtain the appointment of a receiver or take any other step to enforce his security.

HELD—that the plaintiff was entitled to have the garnishee order *nisi* made absolute.

EVANS v. RIVAL GRANITE QUARRY CO., LD., [NORTH AND SOUTH WALES BANK, LD., GARNISHEES; PITMAN, CLAIMANT, [1910] 2 K. B. 979; 79 L. J. K. B. 970; 26 T. L. R. 509; 54 Sol. Jo. 580; 18 Manson, 64—C. A.

11. Specific Mortgage — Floating Security — Assignment of Book Debts—Rents in Arrear — Customs Drawbacks — Notice.—A brewery company created debenture stock secured by a specific charge on certain of the company's property, and by a floating charge on the general assets. Subsequently the company, in consideration of their bankers continuing to do business with them, assigned to them certain book debts, including rents in arrear, and "drawbacks" owing from the Customs authorities. The rents in arrear were partly payable in respect of property comprised in the specific charge under the debenture trust deed, partly of property not so comprised.

HELD—that, in respect of the property not comprised in the specific charge, the rents in arrear were assignable in priority to the debenture-holders; in respect of the property comprised in the specific charge, the rents in arrear were not so assignable; and that the "drawbacks" were assignable in priority to the debenture-holders.

WARD v. ROYAL EXCHANGE SHIPPING CO. ((1887) 58 L. T. 174) followed.

IN RE IND, COOPE & CO., LD., FISHER v. THE COMPANY, KNOX v. THE COMPANY, ARNOLD v. THE COMPANY, [1911] 2 Ch. 223; 80 L. J. Ch. 661; 105 L. T. 356; 55 Sol. Jo. 600—Warrington, J.

12. Charges on "Property" and "Assets"—Uncalled Capital—Winding-up.—A prospectus offering first mortgage debentures stated that these debentures constituted a floating first charge upon the undertaking and all the property of the company; the "assets" were then set out, including uncalled capital on shares. The debentures themselves, however, were only expressed to be a charge upon the company's "undertaking and all its property, both present and future." Afterwards second mortgage debentures were issued under which the company charged its "undertaking and all its property and assets whatsoever and wheresoever, present and future"; but this issue was declared to be a second charge only, ranking next after the first debentures.

HELD—that the word "property" did not include uncalled capital, but that the word "assets" did, and, therefore, that the second debenture-holders were alone entitled to a charge

IX. Debentures, Mortgages, and Charges—*Continued.*

upon capital called up after the winding up of the company.

IN RE ANDREW HANDYSIDE & Co., LD., 131 L. T. [Jo. 125—Neville, J.

(e) Registration.

13. Charge on Book Debts—Reinsurance Contract—Non-registration—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 93 (1) (c).—On May 5th, 1909, a reinsurance contract was entered into between the Law Car and General Insurance Corporation (reinsurers), the applicants (reinsured), and a third party. The contract contained elaborate provisions for the payment of premiums and recoupment of losses and claims under which no premiums were payable direct to the reinsurers, but the aggregate premiums, less the aggregate losses and claims, were made payable to the third party, who was to pay them into a joint account. The current balances to the credit of the joint account were to be held on trust to recoup the reinsured losses and claim. No part of the balance was payable to the reinsurers until 1913, when the actual profit for the year 1910 was to be ascertained and paid to the reinsurers, less a sum held in reserve to provide for unascertained liabilities, and not paid over until all risks had run off. The liquidator of the Law Car Corporation contended that the contract was a charge on book debts of the Corporation within sect. 93, sub-sect. 1 (c), and not having been registered, was void against him.

HELD—that the contract on its true construction created no charge on the book debts, and therefore did not require registration.

IN RE LAW CAR AND GENERAL INSURANCE CORPORATION, [1911] W. N. 91; 55 Sol. Jo. 407—Eady, J.

AFFIRMED ON APPEAL—[1911] W. N. 101; 131 L. T. Jo. 596—C. A.

(f) Validity.

14. Floating Charge within Three Months of Winding-up—Meaning of "Cash"—Agreement for Floating Charge—Registration—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 93, 212.—The object of sect. 212 of the Companies (Consolidation) Act, 1908, was to prevent insolvent companies from creating floating charges to secure past debts or for moneys which do not go to swell their assets and become available for creditors.

The term "cash" in sect. 212 is not to be interpreted by the light of the decisions as to the meaning of that term in sect. 25 of the Companies Act, 1867.

Where moneys are advanced to secure the liability of a company under an antecedent independent guarantee, debentures giving a floating charge created by the company in favour of the guarantors, who find money to pay off the debt owing by the company and guaranteed by them, are, if the company goes into winding-up within three calendar months after the issue of the debentures, invalid unless

it is proved that the company was solvent immediately after the creation of the charge.

Quære whether it is necessary to register under sect. 93 of the Act an agreement by a company to give a debenture containing a floating charge on its assets, where no debenture has actually been issued.

IN RE ORLEANS MOTOR Co., LD., [1911] 2 [Ch. 41; 80 L. J. Ch. 477; 104 L. T. 627; 18 Manson, 287—Parker, J.

15. Floating Charge within three Months of Winding-up—Solvency of Company—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 212.—Under sect. 212 of the Companies (Consolidation) Act, 1908, a floating charge created within three months of the winding-up is invalid, except to the amount of any cash paid at the time, unless the company's business is actually solvent at the time, apart from the value of the fixed assets.

HODSON v. BLANCHARDS (LONDON), LD., 131 [L. T. Jo. 9—Neville, J.

X. DEEDS OF ARRANGEMENT.

[No paragraphs in this vol. of the Digest.]

XI. DEFUNCT COMPANY.

See No. 58, *infra*.

XII. DIRECTORS.

See also Nos. 25, 52, *infra*.

(a) General.

16. Contract by Company to Manage Real Estates—Appointment of its own Directors as Agents—Rights of Directors to Make a Profit out of the Contract—Articles of Association—Fiduciary Position—Directors as Trustees.—By an agreement of April, 1893, a company arranged with the plaintiff to manage, develop, and realise his estates on certain terms as to remuneration, and in the course of such management employed one of its directors, who was a solicitor, to act professionally for the estates and paid his bill of costs, which included profit items; another director, who was an estate agent, to manage at a salary a business connected with the estates; another director, who was an auctioneer, to act as auctioneer on all sales of the estates at the usual commission; and gave its secretary, who was a chartered accountant, an additional salary for keeping the books of the estates, which were of a complex nature:—

HELD—that on the construction of the agreement the company were not entitled to make any charge for or in respect of the keeping of the accounts required to be kept by the company.

Decision of Neville, J. ([1910] 2 Ch. 408; 80 L. J. Ch. 36; 103 L. T. 498) affirmed.

HELD, ALSO (Moulton, L.J., dissenting)—that the directors stood in a fiduciary relation to the company but not to the plaintiff, and that the profit costs, salary, and commission paid to the directors in their professional capacity might

XII. Directors—Continued.

be allowed in taking the accounts between the plaintiff and the company under the agreement.

Decision of Neville, J. (*supra*) reversed on this point.

Per Moulton, L.J.: Where a limited company undertakes the administration of a trust, the directors, as individuals, are in a different position from an ordinary agent, and are liable for matters of personal conduct inconsistent with their full knowledge of the fiduciary character of the duties which in the name of the company they have to carry out, and, consequently, in the present case the directors could not use their position as *de facto* administrators of a trust to profit themselves or one another.

Kavanagh v. Workingman's Benefit Building Society [1896] 1 I. R. 56) discussed and disapproved.

BATH *v.* STANDARD LAND CO., LD., [1911]
[1 Ch. 618; 80 L. J. Ch. 426; 104 L. T. 867;
27 T. L. R. 393; 55 Sol. Jo. 452; 18 Manson,
258—C. A.]

17. *Director Interested in Shares—Forfeiture for Non-payment of Calls—Notice.*—A director of a company, who has been a director from the foundation of the company, and has taken an active part in the management, and was himself present at a meeting of the directors at which a resolution was passed declaring certain shares, in which he was beneficially interested, forfeited for non-payment of calls, and himself supported such resolution, will not be allowed to set up that the directors were illegally appointed, so that everything done by them was void *ab initio*, or that notice of his own acts was not legally served upon him.

JONES *v.* NORTH VANCOUVER LAND AND IMPROVEMENT CO., 79 L. J. P. C. 89; 102 L. T. 377; 17 Manson, 349; 47 Sc. L. R. 896—P. C.

(b) Appointment.

See No. 22, *infra*.

(c) Fiduciary Relation.

18. *Agreement Not to Carry on Business in Competition with Company—Company in Liquidation—Breach of Agreement—Taking Lists of Company's Customers.*—The defendant agreed to become managing director of a company for seven years at a specified salary, and he covenanted that he would not while holding office as director or within seven years after ceasing to hold such office carry on any business in competition with that carried on by the company. While the defendant held office as director an order for the compulsory winding up of the company was made, and thereupon the defendant started a competing business, having previously obtained from the company's books lists of their customers. In an action by the company in liquidation to restrain the defendant from carrying on such competing business, and for delivery up of all

lists of the names and addresses of the company's customers copied or extracted from their books:—

HELD, by Joyce, J. ([1910] 1 Ch. 336; 102 L. T. 7; 26 T. L. R. 251; 54 Sol. Jo. 249)—(1) that the plaintiff company were entitled to delivery up of such lists of the names and addresses of their customers; but (2) that the winding-up order operated as a discharge or dismissal of the defendant as director of the company, and that therefore the defendant was no longer bound by the covenant not to carry on business in competition with the company.

General Billposting Co. v. Atkinson ([1909] A. C. 118) applied.

On appeal by the company from the refusal to grant an injunction:—

HELD (Buckley, L.J., dissenting)—that as the company could not allege and prove that they had performed their part of the bargain and were ready also to perform it in the future, they were not entitled to an injunction.

Decision of Joyce, J. (*supra*) affirmed.

MEASURES BROTHERS, LD. *v.* MEASURES, [1910] 2 Ch. 248; 102 L. T. 794; 26 T. L. R. 488; 54 Sol. Jo. 521; 18 Manson, 40—C. A.]

19. *Canada—Sale of Railway to a Company by its Promoters—Purchase authorised by its Incorporating Act—Promoters the only Shareholders—Sale and Purchase upheld as Intra Vires the Company.*—A syndicate of four persons procured a Quebec Act incorporating a railway company which they had promoted and subscribed for \$300,000 of the company's shares (being all that were issued), and were with others whom they had qualified elected directors. They then purchased a railway themselves, and the incorporated company, being empowered so to do by their Act, purchased the said railway from them for \$648,000, paying for it by taking credit for the said subscription and acknowledging indebtedness to the said four persons of the balance of \$348,000 in equal shares. On the insolvency of the said incorporated company and of another company with which it had been amalgamated their railways were sold, and the respondent company, to whom the syndicate's claim had been assigned, claimed to rank as creditors against the proceeds of sale.

HELD—that the claim must be allowed; that the incorporating Act authorised the purchase, and whether or not the price was excessive every one interested in the capital of the company concurred in the purchase with full knowledge of all the circumstances.

Salomon v. Salomon ([1897] A. C. 22) followed.

ATTORNEY-GENERAL FOR CANADA *v.* STANDARD TRUST COMPANY OF NEW YORK, [1911] A. C. 498; 80 L. J. P. C. 189; 105 L. T. 152—P. C.]

XII. Directors *Continued.*(d) *Misfeasance.*

See also No. 53, *infra*.

20. Duty—Liability—Adopting and Carrying out Contract—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69, s. 215.)—A director's duty requires him to act with such care as is reasonably to be expected from him, having regard to his knowledge and experience. He is not bound to bring any special qualifications to his office, but if he is acquainted with the particular business carried on by the company he must give the company the advantage of his knowledge when transacting the company's business. He is not bound to take any definite part in the conduct of the company's business, but so far as he does undertake it he must use reasonable care in its despatch. Such reasonable care must be measured by the care an ordinary man might be expected to take in the same circumstances on his own behalf. He is not responsible for damages occasioned by errors of judgment. Where the company of which he is a director has been formed for the purpose of carrying out a contract, but a discretion is left to the directors by the articles, the directors are bound to exercise their discretion with regard to adopting the contract.

One of the articles of association of a company provided that:—"No director shall be liable . . . for any loss, damage, or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through his own dishonesty."

HELD—that it was not illegal for the company to engage its directors upon such terms, and that the article was intended to relieve the directors, who acted honestly, from liability for damages occasioned even by their negligence, where such negligence was not dishonest.

The words "breach of trust" in sect. 215 of the Companies (Consolidation) Act, 1908, are intended to include breach of duty.

IN RE BRAZILIAN RUBBER PLANTATIONS AND [ESTATES, LD., [1911] 1 Ch. 425; 80 L. J. Ch. 221; 103 L. T. 697; 27 T. L. R. 109; 18 Manson, 177—Neville, J.

21. Qualification Shares—Shares held in Trust for Promoter.—It is a misfeasance for directors of a company to qualify by taking shares from its promoters, holding them in trust for the promoter, and executing a blank transfer which the promoter may fill up and so disqualify the director whenever he pleases, the result being that the directors are bound to act according to the will of the promoter.

Eden v. Ridsdales Railway Lamp and Lighting Co. ((1889) 23 Q. B. D. 368) and *Archer's Case* ([1892] 1 Ch. 322, 337, 341) applied.

IN RE LONDON AND SOUTH WESTERN CANAL [Co., LD., [1911] 1 Ch. 346; 80 L. J. Ch. 234; 104 L. T. 95; 18 Manson, 171—Eady, J.

(e) *Prospectus.*

[No paragraphs in this vol. of the Digest.]

(f) *Powers.*

See also No. 2, *supra*.

22. Appointment of Managing Director—Control of Management by Company in General Meeting—Construction of Articles of Association.—The directors of a company were empowered by the 99th article of association to appoint a managing director, and by the 113th article to carry on the management of the business of the company, subject to such regulations as might be prescribed by the company in general meeting. The directors appointed one of their number as managing director, contrary to the wishes of a majority of the shareholders, who at a general meeting carried a resolution that another should be appointed.

HELD—that the appointment of a managing director was vested in the directors, and was outside the provisions of article 113, and that the motion for an interim injunction restraining the directors from acting on their resolution appointing a managing director accordingly failed.

Dicta of Buckley, L.J., in *Gramophone and Typewriter, Ltd. v. Stanley* ([1908] 2 K. B. 89, 105) applied.

THOMAS LOGAN, LD. v. DAVIS, 104 L. T. 914; [55 Sol. Jo. 498—Warrington, J.

HELD ON APPEAL (without any final opinion being expressed as to the applicability of the articles)—that the motion for the interim injunction was not maintainable—105 L. T. 419—C. A.

23. Management—Balance Sheet—Under-valuation of Stock—Concealed Assets—Ultra Vires—Action by Objecting Shareholder—Relevance—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 113, 281.]—A shareholder in a limited company, carrying on the business of timber merchants, brought an action of declarator and interdict against the company, in which he averred that the balance sheet issued by the directors and passed by a general meeting was false and *ultra vires*, in respect that the stock of timber was entered therein at less than its true market value, whereby a part of the profits earned by the company were concealed from the shareholders, but he made no averment of fraud on the part of the directors:—

HELD—that the valuation of the stock of timber was an administrative matter within the discretion of the directors in connection with which they were answerable alone to the general body of shareholders of the company; that there was no relevant averments of *ultra vires* acting on the part of the company or the directors; and the action dismissed.

YOUNG v. BROWNLEE & Co., [1911] S. C. 677; [48 Sc. L. R. 462—Ct. of Sess.

(g) *Qualification.*

[No paragraphs in this vol. of the Digest.]

XII. Directors—Continued.

(h) Quorum.

24. *Allotment—Minimum Number of Directors—Quorum—Power for Continuing Directors to Act—Minimum Number never Appointed—Allotment by Quorum being less than Minimum Number—Invalidity—Estoppel—Practice—Rectification of Register on Application of Company.*]

—The articles of association of a company provided that the number of directors should not be less than four or more than eight; that the two vendors should be the first directors; that the first directors should have power before the first general meeting to appoint additional directors but so that the number should not exceed seven; that continuing directors might act notwithstanding any vacancy; that three directors should be a quorum. The two first directors appointed a third, and the three held board meetings and allotted shares, including 2,000 shares which were allotted as fully paid by way of commission to M., the promoter of the company. M. had transferred some of his shares to H., the solicitor of the company, partly as a gift and partly in payment of his costs, and others to *bonâ fide* purchasers. The company never really commenced business and was ordered to be wound up compulsorily on the petition of shareholders. The vendors, who had acted honestly, paid all the debts of the company and repaid the "*bonâ fide*" shareholders what they had paid, taking transfers of their shares. The liquidator took out a summons in the name of the company to rectify the register by striking off the names of M. and H. M. and H. had full notice and knowledge of the articles and the circumstances, but the effect of striking off their names would be to leave the vendors the only shareholders of the company and enable them to take back their property:—

HELD—that there never having been a properly constituted board of directors, the allotments made by the three directors could not be justified either because they were a quorum or because they were continuing directors; that the original allotment to M. was bad, and nothing in the circumstances estopped the company from applying to rectify the register, and the names of M. and H. must be removed.

IN RE SLY, SPINK & Co., [1911] 2 Ch. 430; [105 L. T. 364—Neville, J.

(i) Remuneration.

[No paragraphs in this vol. of the Digest.]

(k) Vacation of Office.

[No paragraphs in this vol. of the Digest.]

XIII. DIVIDENDS.

See SETTLEMENTS, No. 22; WATERWORKS, No. 2.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) Payment out of Capital.

[No paragraphs in this vol. of the Digest.]

(c) Preference Shares.

[No paragraphs in this vol. of the Digest.]

XIV. FLOTATION AND INCORPORATION.

[No paragraphs in this vol. of the Digest.]

XV. MANAGEMENT.

[No paragraphs in this vol. of the Digest.]

XVI. MEETINGS.

See also No. 2, *supra*; No. 33, *infra*.

(a) General.

See also No. 22, *supra*.

25. *Failure to hold General Meeting of Company—List of Members and Summary—Default in Forwarding to Registrar—Liability to Penalty—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 26, 64.* If directors of a company knowingly and wilfully permit default by the company in complying with the requirements of sect. 26 of the Companies (Consolidation) Act, 1908, as to the sending to the Registrar of Companies an annual list of members and summary, they are liable to the penalty imposed by that section, notwithstanding that the company has not held a general meeting in any year, if the directors have been knowingly parties to the default of the company in not holding such general meeting.

Gibson v. Barton ((1875) L. R. 10 Q. B. 329) followed.

PARK v. LAWTON, [1911] 1 K. B. 588; 80 [L. J. K. B. 396; 104 L. T. 184; 75 J. P. 163; 27 T. L. R. 192; 18 Manson, 151—Div. Ct.

(b) Extraordinary.

26. *Reduction of Capital—Extraordinary Resolution—Statutory Majority—Declaration of Chairman that Resolution Carried—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 69 (1) and (3).*—C. & Co., Ltd., brought a petition for confirmation of reduction of capital. An extraordinary resolution in favour of the proposed reduction was passed at a meeting at which twelve shareholders who were entitled to vote were present. Of these eight voted for the resolution, two against it, and two did not vote at all. No poll was demanded, and the chairman declared the resolution carried.

HELD—that the extraordinary resolution had not been duly passed, in respect that a majority of three-fourths of the members entitled to vote who were present at the meeting had not voted in its favour, as required by sub-sect. 1 of sect. 69 of the Companies (Consolidation) Act, 1908, and that the chairman's declaration that the resolution was carried did not legalise the proceedings, it being apparent on the face of them that the statutory requirements had not been complied with.

IN RE JOHN T. CLARK & Co., 48 Sc. L. R. 154 [—Ct. of Sess.

(c) Special Resolution.

27. *Form of Notice of Meeting—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 69 (2) (a).*—It is not necessary that the notice convening a meeting at which a special resolution is to be passed should state that such

XVI. Meetings—Continued.

resolution is to be proposed as an extraordinary resolution, as sect. 69, sub-sect. 2 (a), of the Companies (Consolidation) Act, 1908, only refers to the passing of the resolution, not to the calling together of the meeting for the purpose of passing it.

IN RE PENARTH PONTOON SLIPWAY AND SHIP REPAIRING CO., LD., [1911] W. N. 240; 56 Sol. Jo. 124—Eady J.

(d) Separate Class Meeting.

28. "Meeting"—*Sole Preference Shareholder.*—Although a single individual cannot constitute "a meeting" in the ordinary sense of that word the context may show the word to be used in an unusual sense and in such a way as to include the formal consent of the sole member of the class, the consent of which is required to be obtained "at a meeting."

Sharp v. Dawes ((1876) 2 Q. B. D. 26) and *In re Sanitary Carbon Co.* ([1877] W. N. 223) commented upon.

EAST v. BENNETT BROTHERS, LD., [1911] 1 Ch. 163; 80 L. J. Ch. 123; 103 L. T. 826; 27 T. L. R. 103; 55 Sol. Jo. 92; 18 Manson, 145—Warrington, J.

29. *Scheme of Arrangement—Winding Up—Four Classes of Shareholders—Scheme Approved by Three Classes—No Meeting of Fourth Class—Consequent Dismissal of Petition for Sanction—Scheme Subsequently Approved by Fourth Class—No Fresh Meetings of Other Three Classes—Fresh Petition—Company—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 120.]—A petition for sanction of a scheme of arrangement was dismissed, as it appeared that the scheme had been approved by separate class meetings of groups A, B, and D of the shareholders, but that there had been no meeting of group C, who were then strongly opposed to the scheme. [See [1910] 2 Ch. 477; Butterworth's Yearly Digest, 1910, col. 81.] Subsequently a separate meeting of group C was held. It was attended in person or by proxy by members holding considerably more than three-fourths of the shares in group C, including all the former opponents, and the scheme was unanimously approved at the meeting. The company and its liquidator then presented the present petition without holding fresh meetings of groups A, B and D, no notice of opposition having been received from any member of those groups.

HELD—that the scheme should be sanctioned, subject to a small modification, without requiring fresh meetings of groups A, B, and D.

IN RE UNITED PROVIDENT ASSURANCE CO., [1911] W. N. 40; 45 L. J. N. C. 108—Eady, J.

XVII. MEMORANDUM OF ASSOCIATION.

(a) General.

30. *Conversion of Friendly Society into Company—Extension of Objects—Ultra Vires—Registration of Company—Friendly Societies Act, 1896*

(59 & 60 Vict. c. 25), s. 71—*Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 17.]—A registered friendly society was converted into a company limited by guarantee, and the objects of the company as set forth in the memorandum of association were not only to continue the business of the friendly society, but also to carry on all kinds of insurance business. The company was duly registered. In an action by a member suing on behalf of himself and all other members of the company for an injunction to restrain the company from exercising the powers in the memorandum which were in excess of those of the original society:—

HELD—that even assuming that the plaintiff was right in his contention that it was not competent for the friendly society to convert itself into a limited company, he, as a member of the company, was not entitled to an injunction to restrain the company from carrying out the objects of its memorandum of association.

Decision of Eve, J. (102 L. T. 276; 26 T. L. R. 357; 54 Sol. Jo. 361) affirmed.

MCGLADE v. ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD., [1910] 2 Ch. 169; 79 L. J. Ch. 631; 103 L. T. 155; 26 T. L. R. 471; 54 Sol. Jo. 505; 17 Manson, 358—C. A.

(b) Alteration.

31. *Objects of Company—Power to Purchase Other Undertakings—Power of Amalgamation—Power of Sale—Sanction of Court—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 9 (i.).]—The Court, under sect. 9 of the Companies (Consolidation) Act, 1908, may in its discretion sanction very wide alterations of the objects of a company, including the addition of a power to purchase other undertakings, a power of amalgamation with other concerns, and a power of sale of the whole of the company's undertaking.

IN RE NEW WESTMINSTER BREWERY CO., [1911] W. N. 247; 56 Sol. Jo. 141—Joyce, J.

32. *Objects of Company—Power to Lease Undertaking—Sanction of Court—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 9 (i.).]—The Court, under sect. 9 of the Companies (Consolidation) Act, 1908, may in its discretion sanction alterations of the objects of a company, which include the addition of a power to lease the whole undertaking of the company.

IN RE ANGLO-AMERICAN TELEGRAPH CO., [LD., [1911] W. N. 248; 56 Sol. Jo. 141—Joyce, J.

XVIII. NOTICES.

33. *Notice of Meeting—"Clear Days"—Articles of Association—Construction.*]—Under clause 152 of a company's articles of association, where a given number of days' notice was required to be given, the day of service was to be counted in the number of days, unless otherwise provided. Under clause 65 "seven clear days' notice" had to be given of a meeting, and, under clause 22, "fourteen clear days' notice" of any call.

VIII. Notices—Continued.

HELD—that clause 152 did not apply to the seven clear days' notice of a meeting required under clause 65, and that the day of service of such notice could not be counted as one of the seven days.

IN RE PAVILION, NEWCASTLE-UPON-TYNE, I.D.
[AND REDUCED, [1911] W. N. 235—Parker, J.]

XIX. PROMOTERS.

See **BANKRUPTCY**, No. 24.

XX. PROSPECTUS.

See also No. 7, *supra*.

(a) General.

34. Non-disclosure—Misrepresentation.—On an application by a person for the rectification of the register of members by the removal of his name therefrom on the ground of misrepresentations in the prospectus by the omission to disclose a certain fact, it is not enough for the applicant to show mere non-disclosure of the fact; he must show that if the fact had been disclosed it would falsify some statement in the prospectus.

IN RE CHRISTINEVILLE RUBBER ESTATES, [LD., [1911] W. N. 216; 28 T. L. R. 38; 56 Sol. Jo. 53—Eve, J.]

35. Misrepresentation—Repudiation of Shares—Application by Shareholder to Remove Name from Register—Laches.—In February, 1910, the applicant applied for and was allotted shares in the company. In the middle of May, or at the latest by the end of July, the applicant became aware that there were misrepresentations in the prospectus. In December he applied to the Court to have his name removed from the register on the ground of the misrepresentation.

HELD—that the lapse of time between the discovery of the true state of things and repudiation was too long, and precluded the applicant from obtaining relief.

IN RE CHRISTINEVILLE RUBBER ESTATES, [LD., [1911] W. N. 216; 28 T. L. R. 38; 56 Sol. Jo. 53—Eve, J.]

(b) Liability of Directors.

[No paragraphs in this vol. of the Digest.]

(c) Particulars required.

36. Previous Offer of Shares—Remedy for Omission—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 81, 285.—In February, 1910, a prospectus was issued on behalf of a company, headed "For private circulation only," but also containing a statement that it had been filed with the Registrar of Joint Stock Companies. It was stated that this prospectus was distributed by the promoter only to shareholders in certain gas companies in which he was interested, and not more than 3,000 copies were sent out. In April, 1910, a second prospectus was issued which contained no statement of the first offer of shares. B.

applied for and was allotted shares on the terms of the second prospectus. He died soon afterwards. His executors moved to rectify the register by removing his name on the ground that there was a breach of sect. 81 of the Companies (Consolidation) Act, 1908, in not stating the offer of shares contained in the first prospectus and the amount subscribed:—

HELD, on the evidence—that the circulation of the first prospectus was an offer of shares to the public within the meaning of the Act of 1908; that consequently the second prospectus was a "subsequent offer" within sect. 81 of the same Act and the first offer ought to have been stated.

BUT HELD—that the remedy of the allottee was in damages against the persons responsible for the prospectus and not by rescission.

In re Wimbledon Olympia, Ltd. ([1910] 1 Ch. 630) followed.

IN RE SOUTH OF ENGLAND NATURAL GAS AND [PETROLEUM CO., LD., [1911] 1 Ch. 573; 80 L. J. Ch. 358; 104 L. T. 378; 55 Sol. Jo. 442; 18 Manson, 241—Eady, J.]

XXI. PROXIES.

[No paragraphs in this vol. of the Digest.]

XXII. RECEIVERS.

See also No. 10, *supra*; **SHIPPING**, No. 30.

37. Appointment of Receiver by Debenture-holders—Remuneration, by whom payable—Receiver Agent of Debenture-holders—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 19, sub-ss. 1, 2, 3; s. 24, sub-ss. 2, 6.—By debentures issued by a company, its undertaking and all its property, both present and future, were charged with payment of the debenture debts, and, by a condition indorsed on and forming part of the debentures, it was provided that "at any time after the principal moneys hereby secured become payable, the registered holder of this debenture may, with the consent in writing of the majority in value of the outstanding debentures of the same issue, appoint by writing any person or persons to be a receiver or receivers of the property charged by the debentures, and such appointment shall be as effective as if all the holders of debentures of the same issue had concurred in such appointment; and a receiver so appointed shall have power (1.) to take possession of, collect, and get in the property charged by the debentures, and for that purpose to take any proceedings in the name of the company or otherwise as may seem expedient; (2.) to carry on, or concur in carrying on, the business of the company, and for that purpose to raise money on the premises charged in priority to the debentures; (3.) to sell, or concur in selling, any of the property charged by the debentures after giving the company at least seven days' notice of his intention to sell, and to carry any such sale into effect by conveying in the name and on behalf of the company; (4.) to make any arrangement or compromise which he or they shall think expedient in the interests of the debenture-holders;

XXII. Receivers *Continued.*

and all moneys held by such receiver or receivers shall, after providing for the matters specified in the first three paragraphs of clause 8 of section 21 of the Conveyancing and Law of Property Act, 1881, and for the purposes aforesaid, be applied in or towards satisfaction *pari passu* of the debentures; and the foregoing provisions in this condition shall take effect as and by way of variation and extension of the provisions of sections [blank] of the said Act, which provisions so varied and extended shall be regarded as incorporated herein."

The principal moneys secured by the debentures having become payable, a receiver was appointed by holders of the majority in value of the outstanding debentures under the above-mentioned condition. In an action by the receiver against the debenture-holders by whom he was appointed for remuneration in respect of services rendered by him as such receiver:—

HELD—upon the terms of the before-mentioned condition in the debentures, that in rendering those services the receiver was acting as agent of the debenture-holders by whom he was appointed, and not of the company, and that he was therefore entitled to remuneration from the debenture-holders.

In re Vimbos, Ltd. ([1900] 1 Ch. 470) and *Robinson Printing Co. v. Chic, Ltd.* ([1905] 2 Ch. 123) followed.

DEYES v. WOOD, [1911] 1 K. B. 806; 80 L. J. [K. B. 553; 104 L. T. 401; 18 Manson, 229—C. A.]

XXIII. RECONSTRUCTION.

[No paragraphs in this vol. of the Digest.]

XXIV. REDUCTION OF CAPITAL.

See also No. 26, *supra*.

(a) General.

38. Scheme — Confirmation — Jurisdiction — Costs of Dissident Shareholder — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 46.]—A scheme for the reduction of the share capital of a company comes within sect. 46 of the Companies (Consolidation) Act, 1908, although it differentiates between the holders of the same class of shares to the extent of paying off some and not others, and imposes upon the shareholders whose shares are to be extinguished the obligation to accept debenture stock in lieu of cash, and also involves the advance to the company of the moneys to be utilised in redemption of the share capital by the very persons whose shares are to be redeemed.

In re Nixon's Navigation Co. ([1897] 1 Ch. 872) followed.

The Court may make it a term of the confirmation of such a scheme that the costs of a dissident shareholder who has assisted the Court by his criticism of the scheme shall be provided for by the company.

IN RE THOMAS DE LA RUE & Co., LD., [1911] 2 Ch. 361; 105 L. T. 512; 55 Sol. Jo. 715—Eve, J.

39. Dispensing with Words "and Reduced" — Company Carrying on Business Abroad — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 48.]—On the confirmation of a reduction of capital it is not the general practice to allow the use of the words "and Reduced" to be dispensed with in the case of companies carrying on business abroad.

IN RE LINDNER & Co., [1911] W. N. 66; 130 [L. T. Jo. 505; 45 L. J. N. C. 186—Joyce, J.]

40. Petition for Confirmation — Omission of Words "and Reduced" — Companies (Consolidation) Act, 1901 (8 Edw. 7, c. 69), s. 48.]—C. & Co., Ltd., having passed and confirmed a resolution for reduction of capital, presented a petition to the Court for confirmation of the proposed reduction. The company did not, on and from the presentation of the petition for confirmation, add the words "and reduced" to its name, as required by sect. 48 of the Companies (Consolidation) Act, 1908.

HELD—that the petition was incompetent in respect that the company had failed to comply with the terms of the statute.

IN RE JOHN T. CLARK & Co., LD., 48 Sc. L. R. [154—Ct. of Sess.]

41. Objecting Creditor — Claim for Rent Under Unexpired Lease — Contingent Claim — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 49 (3).]—A company which was tenant of certain subjects under a lease presented a petition for confirmation of a resolution to reduce its capital. The proprietors of the subjects objected to the petition being granted until the company either consigned the rent for the remainder of the lease or granted security therefor.

HELD—that the company's liability for the rent under the lease, though a future, was not a contingent debt in the sense of sect. 49, subsect. 3, of the Companies (Consolidation) Act, 1908, and that, as the company was unable to consign the future rent or grant security therefor, the petition must be dismissed.

PALACE BILLIARD ROOMS, LD. AND REDUCED, [PETITIONERS, 49 Sc. L. R. 4—Ct. of Sess.]

(b) Loss of Capital.

[No paragraphs in this vol. of the Digest.]

(c) Power to Reduce.

[No paragraphs in this vol. of the Digest.]

(d) Return to Shareholders of Capital not required.

42. Power to return Accumulated Profits to Fully Paid Shareholders — Other Shares not Fully Paid — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 40.]—Of the ordinary £5 shares of the defendant company, there were 6,047 fully paid and 53,953 which were paid up only to the extent of £1 per share. The company, having accumulated a large reserve fund, passed and confirmed a special resolution for the return of £4 per share on the 6,047 fully paid shares.

XXIV. Reduction of Capital.—*Continued.*

HELD—that the company had power under sect. 40 of the Companies (Consolidation) Act, 1908, to reduce the paid-up capital in the manner proposed by the special resolution.

NEALE v. CITY OF BIRMINGHAM TRAMWAYS [Co., [1910] 2 Ch. 464; 79 L. J. Ch. 683; 103 L. T. 59; 26 T. L. R. 588; 54 Sol. Jo. 651; 18 Manson, 100—Eady, J.

XXV. REGISTER OF MEMBERS.

See No. 24, *supra*.

XXVI. REGISTRATION.

43. *Conclusiveness of Certificate*—*Companies Act*, 1900 (63 & 64 Vict. c. 48), s. 1.]—Sect. 1 of the Companies Act, 1900, does not make the certificate of the Registrar of Companies conclusive that the company in respect of which he has granted a certificate is validly registered and is not in reality a trade union. The section only deals with ministerial acts.

BRITISH ASSOCIATION OF GLASS BOTTLE MANUFACTURERS, LD. v. NETTLEFOLD, 27 T. L. R. 527—Hamilton, J.

See also S. C. TRADE AND TRADE UNIONS, No. 2.

XXVII. SALE OF UNDERTAKING.

See also No. 48, *infra*.

44. *Company in which the Public have Rights and Interests*—*Debenture-holder's Action*—*Jurisdiction to Direct a Sale*—*Crystal Palace Company's Act*, 1877 (40 & 41 Vict. c. cxvii.).]—Having regard to its character, and the provisions contained in the Act by which it was constituted and in its original deed of settlement and charter, the Crystal Palace Co. is not a company of such a class that the rights and interests of the public in the company prevent the Court from directing a sale of its undertaking and property.

Decision of Eady, J. ([1911] W. N. 74; 104 L. T. 251; 27 T. L. R. 305; 55 Sol. Jo. 348) affirmed.

IN RE CRYSTAL PALACE COMPANY, Fox v. THE [COMPANY, [1911] W. N. 104; 104 L. T. 898; 27 T. L. R. 413—C. A.

45. *Gas Works*—*Statutory Sale of Undertaking to Municipality*—*What Included in Sale*—*Western Australia*.]—Where a statute authorises the sale of such things as the physical land, buildings, apparatus, and equipment of such a body as a gas company—things which are comparatively worthless to the purchaser, unless with them he acquires the statutory powers to use them which the vendors enjoyed—the reasonable conclusion to be drawn in the absence of an express provision dealing with the matter is, *prima facie*, that the sale of the physical things carries with it to the purchaser the right and power to use them as the vendor had used them, and that that right and power are part of the subject sold.

PERTH GAS CO. v. CITY OF PERTH CORPORATION, [1911] A. C. 506; 80 L. J. P. C. 168; 105 L. T. 266; 27 T. L. R. 526—P. C.

XXVIII. SECRETARY.

[No paragraphs in this vol. of the Digest.]

XXIX. SHAREHOLDERS.

See also No. 25, *supra*.

46. *Ultra vires Resolution*—*Injunction to Restrain Company from Acting on Resolution*—*Shareholder Party to Resolution*.]—A shareholder is not debarred from claiming an injunction to restrain a company from acting on an *ultra vires* resolution by the fact that he has himself been a party to the passing of the resolution, and has assented to previous illegal acts done under it.

TOWERS v. AFRICAN TUG CO. ([1904] 1 Ch. 558) distinguished.

MOSELY v. KOFFYFONTEIN MINES, LD., [1911] 1 Ch. 73; 80 L. J. Ch. 111; 103 L. T. 616; 27 T. L. R. 61; 55 Sol. Jo. 44; 18 Manson, 86—C. A.

See S. C. on appeal under VI., *supra*.

XXX. SHARES.

(a) General.

47. *Irregular Issue of Stock*—*Bonus Shares*—*Ultra Vires*—*Winding up*—*Surplus Assets*.]—The irregularity committed by a company in issuing fully paid stock without first issuing shares is a mere irregularity which will not in equity be held to avoid the transaction, but can be ignored, and the stock will accordingly be deemed to have been properly issued.

The issue of bonus shares being wholly *ultra vires* in this case such shares were treated as non-existent, and the holders thereof were accordingly neither liable to pay calls thereon nor entitled to rank as creditors against the company.

IN RE HOME AND FOREIGN INVESTMENT AND [AGENCY CO., 56 Sol. Jo. 124—Eady, J.

(b) Allotment.

See also No. 24, *supra*.

48. *Issue of Shares to "Company or to its Nominees"*—*Exercise of Option*.]—A company sold its business, and all its assets, except uncalled capital, to another company, and the latter company agreed to issue to the former or to its nominees certain shares which were to be in a precisely corresponding position as the shares of the selling company in respect of being fully paid or of having an uncalled liability. The purchasing company purported to issue the shares, on most of which there was a large liability, to the selling company without giving it an opportunity of naming any nominees.

HELD—that the allotment of the shares in these circumstances was not warranted.

IN RE NATIONAL STANDARD LIFE ASSURANCE [CORPORATION, LD., 27 T. L. R. 271—Eady, J.

(c) Calls.

See Nos. 47, 49, *infra*.

XXX. Shares—*Continued.*

(d) Certificate.

[No paragraphs in this vol. of the Digest.]

(e) Forfeiture.

49. *Injunction to Restrain Forfeiture—Pending Action to Rescind Contract to Take Shares—Unpaid Calls.* The plaintiff was allotted eighty shares of £1 each in the defendant company in respect of which he paid up £60. Subsequently he gave notice to the company rescinding the contract to take the shares on the ground of misrepresentation in the prospectus on the faith of which he had applied for them. Later he received from the company notice to pay the balance due upon the shares. He then issued a writ against the company claiming, *inter alia*, rescission of the contract to take shares and repayment with interest of the money already paid for them. After that he received notice from the company that his shares would be liable to forfeiture if the amount unpaid on them were not paid by a certain date. Before the date mentioned he applied for an injunction restraining the company, pending the trial of the action, from making any call in respect of his shares and from forfeiting them.

Held—that, the plaintiff consenting to pay the amount of the unpaid call into Court, the injunction should be granted.

Ripley v. Paper Bottle Co. ((1887) 57 L. J. Ch. 327) disapproved.

Decision of Lush, J., reversed.

JONES v. PACAYA RUBBER AND PRODUCE CO., [LD., [1911] 1 K. B. 455; 80 L. J. K. B. 155; 104 L. T. 446; 18 Manson, 139—C. A.

(f) Issued at a Discount.

[No paragraphs in this vol. of the Digest.]

(g) Issued not for Cash.

[No paragraphs in this vol. of the Digest.]

(h) Transfer.

[No paragraphs in this vol. of the Digest.]

(i) Underwriting Agreements.

50. *Private Company—Payment of Commission for Procuring Subscriptions for Shares—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 89.—Sect. 89 of the Companies (Consolidation) Act, 1908—which prohibits, except in certain specified cases, the payment by a company of commission to any person for subscribing, or procuring subscriptions, for shares in the company—applies to private as well as to public companies.

DOMINION OF CANADA GENERAL TRADING [AND INVESTMENT SYNDICATE v. BRIGSTOCKE, [1911] 2 K. B. 648; 80 L. J. K. B. 1344; 27 T. L. R. 508; 55 Sol. Jo. 633—Div. Ct.

XXXI. UNREGISTERED COMPANIES.

51. *Company Established Outside the United Kingdom—"Place of Business"—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69),

s. 274.]—Certain investment companies were incorporated in Canada, and had their head offices there. They received money for investment from persons resident in the United Kingdom and issued debentures in exchange therefor, and they employed agents in the United Kingdom for this purpose. These agents advertised that the companies were willing to receive money on debenture on certain terms, that applications were to be lodged with them (the agents), and the money paid into certain banks. But everything in the way of making the contract itself—by issuing the debenture, inscribing the debenture in the proper register, and so on—was done at their own head offices in Canada. They did not own any offices or real estate in the United Kingdom, nor possess any offices under lease or otherwise. Their agents were paid by commission on the debentures they placed.

Held—that the companies had not established places of business within the United Kingdom within the meaning of sect. 274 of the Companies (Consolidation) Act, 1908, and accordingly were not bound to conform to the regulations thereof.

LORD ADVOCATE v. HURON AND ERIE LOAN AND [SAVINGS CO. AND OTHERS, [1911] S. C. 612; 48 Sc. L. R. 554—Ct. of Sess.

XXXII. VOTING.

[No paragraphs in this vol. of the Digest.]

XXXIII. WINDING UP.

See also Nos. 13, 14, 15, 29, *supra*;
• BANKERS, No. 1; CONTRACT, No. 2;
INSURANCE, No. 12; SOLICITORS,
No. 19.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) Assets.

See No. 12, *supra*.

(c) Compulsory Order.

[No paragraphs in this vol. of the Digest.]

(d) Contributories.

52. *List of Contributories—Certificate that Shares Fully Paid—Estoppel—Firm Registered as Proprietor of Shares not Fully Paid—Certificate Signed by Member of Firm as Director of Company—Constructive Notice.*—C. and K., trading in partnership as C., K. & Co., mortgaged a sailing ship for £1,000 and paid the money to a company for 1,000 fully-paid £1 shares, and then sold the ship, subject to the mortgage, to the company for £500. The money was credited by the company in their account with E., a promoter of the company, who was at that time keeping their books, as being in payment of the 5s. per share payable on application on 4,000 shares applied for by E., and subsequently allotted to him. Later, K. having been elected a director of the company, a certificate, signed by K. and another director, was issued by the company to C., K. & Co. stating that they were

XXXIII. Winding up—Continued.

the registered proprietors of 1,000 fully paid ordinary shares of £1 each, and E. executed a transfer to C., K. & Co. of 1,000 shares for a nominal consideration. Ten shillings a share was payable on allotment of shares of the company, and a final call of 5s. a share was made, but no demand for these sums was made on C., K. & Co. On the liquidation of the company, the liquidator had entered C., K. & Co. on the list of contributories for 1,000 shares with only 5s. paid. The judge found on the evidence that the transaction as between the firm and the company was in good faith, and that there was no evidence of collusion between K. and E.

HELD—that the signing of the certificate by K. did not prevent its acting as an estoppel in favour of his firm; that K. was not affected by constructive notice in the absence of actual knowledge of what appeared in the books of the company; and that C., K. & Co. were entitled to have their name removed from the list of contributories.

IN RE COASTERS, LD., [1911] 1 Ch. 86; 80 [L. J. Ch. 89; 103 L. T. 632; 18 Manson, 133—Neville, J.

(e) Creditors.

[No paragraphs in this vol. of the Digest.]

(f) Examination.

53. Official Receiver's Report—Allegation of Fraud against Director—Exculpation of Person against whom Charge Made—Liability of Official Receiver to be Ordered to Pay Costs Personally—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8 (b).]—The Companies (Winding-up) Act, 1890, s. 8 (2), provides that an official receiver, after making a preliminary report as provided in sub-sect. 1 of the section, "may also, if he thinks fit, make a further report or reports stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since the formation thereof."

Under the above section the official receiver discharges a duty of a judicial character, and there is therefore no jurisdiction to order that he shall personally bear the costs of the public examination of a person against whom he has made a further report to the Court. Where, however, on a successful application by such person for an order exculpating him from the charges made against him in the official receiver's report, the official receiver appears and opposes it, and thus makes himself a respondent to the proceedings, the Court has jurisdiction to make him personally pay the costs of the application.

In re Raynes Park Golf Club ([1899] 1 Q. B. 961) doubted.

Decision of Div. Ct. ([1910] 2 K. B. 67; 102 L. T. 532) reversed on the latter point.

IN RE JOHN TWEDDLE & Co., [1910] 2 K. B. [697; 80 L. J. K. B. 20; 103 L. T. 257; 26 T. L. R. 583—C. A.

(g) Fraudulent Preference.

[No paragraphs in this vol. of the Digest.]

(h) Liquidators.

See No. 55, *infra*.

(i) Petition.

[No paragraphs in this vol. of the Digest.]

(k) Practice.

See also No. 24, *supra*.

54. Jurisdiction—County Court—Proceedings in Wrong Court—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 131.]—At the date of the presentation of a petition in the Southsea County Court for the winding up of a company, and for the greater part of the six months preceding that date, the company's registered office was in London. All its assets were in Portsmouth, and the office of the company had been there for a considerable time during the six months preceding the petition for winding up.

HELD—that by virtue of sub-sect. 7 of sect. 131 of the Companies (Consolidation) Act, 1908, the judge of the Southsea County Court had jurisdiction to hear the petition.

IN RE SOUTHSEA GARAGE, LD., 27 T. L. R. [295; 55 Sol. Jo. 314—Div. Ct.

55. Costs of Litigation—Unsuccessful Action brought by Company before Winding up—Judgment under Appeal.]—The mere fact of the judgment obtained against a liquidator being under appeal does not affect the application of the rule laid down in *In re Wenborn & Co.*, [1905] 1 Ch. 413, that the successful defendant is entitled to have his costs in full out of the assets of the company of an action brought by the company and continued after winding up by the liquidator.

IN RE THOMAS FREE & SONS, LD., 56 Sol. Jo. [175—Eady, J.

(l) Proof.

[No paragraphs in this vol. of the Digest.]

(m) Reconstruction.

[No paragraphs in this vol. of the Digest.]

(n) Surplus Assets.

See also No. 47, *supra*.

56. Salary Payable out of Profits—Debentures Realised after Commencement of Winding up—"Profits."]—The appellants were to receive a certain monthly salary from the respondent company, subject to the proviso that they should not be entitled to draw such salary "except only out of profits, if any, arising from the business of the company which may from time to time be available for such purpose, but such salary shall nevertheless be cumulative, and accordingly any arrears thereof shall be payable out of any succeeding profits as aforesaid." The company, whose business included the purchase and sale of shares, acquired certain debentures, but for some time no value was attributed to them in the company's balance-sheet. The company went into voluntary liquidation. At

XXXIII. **Winding up**—*Continued.*

the commencement of the winding up there was a debit balance on profit and loss account. The debentures were sold by the liquidator shortly after his appointment.

HELD—that the realisation of the debentures was not new business carried on by the liquidator, and that the entire proceeds from the sale must be treated as profits arising from the company's business out of which the appellants were entitled to be paid.

Meaning of "profits" explained by Moulton, L.J.

In re Bridgwater Navigation Co. ([1891] 2 Ch. 317) followed.

Frames v. Bultfontein Mining Co. ([1891] 1 Ch. 140) and *Rishton v. Grissell* ([1868] L. R. 5 Eq. 326) distinguished.

Decision of Eady, J., reversed.

IN RE SPANISH PROSPECTING CO., LD., [1911] 1 Ch. 92; 80 L. J. Ch. 210; 103 L. T. 609; 27 T. L. R. 76; 55 Sol. Jo. 63; 18 Manson, 191—C. A.

XXXIV. **VOLUNTARY WINDING UP.**

See also **EXECUTION**, No. 1; **SOLICITORS**, No. 9.

(a) **General.**

[No paragraphs in this vol. of the Digest.]

(b) **Liquidators.**

[No paragraphs in this vol. of the Digest.]

(c) **Reconstruction.**

[No paragraphs in this vol. of the Digest.]

(d) **Supervision Orders.**

[No paragraphs in this vol. of the Digest.]

(e) **Surplus Assets.**

57. "Surplus Assets"—*Meaning*—*Articles of Association*.—The capital of a company consisted of 5,000 shares of £1 each, called A shares, and 5,000 shares of 1s. each, called B. shares. The articles of association provided that in the event of a winding up the surplus assets should be divided into two moieties, one of which should belong to and be distributed amongst the holders of the A. shares, and the other amongst the holders of the B. shares, and that the profits available for distribution should be divided in the same way. All the shares had been paid in full. The company was in voluntary liquidation. The liquidator had paid the debts of the company and the costs of winding up and had a balance in his hands. He took out this summons for the determination of the question how the balance ought to be divided between the two classes of shareholders.

HELD—that surplus assets in this case meant the surplus after payment of outside liabilities and repayment to the shareholders of capital paid up.

Semble—in every case where surplus assets are directed to be divided between two classes of shares without reference to the nominal amounts of the shares or the amounts paid up, there is a

presumption that surplus assets means a surplus after payment of outside liabilities and repayment of capital, and it needs clear and express words to give the phrase the meaning of surplus after payment of debts and costs only.

IN RE RAMEL SYNDICATE, LD., [1911] 1 Ch. 749; 80 L. J. Ch. 455; 104 L. T. 842; 18 Manson, 297—Neville, J.

58. Assets after Dissolution—*Motion to Revoke Company — Practice — Rights of Crown*—*Bona vacantia*—*Companies (Consolidation) Act*, 1908 (8 Edw. 7, c. 69), ss. 195, 223.]—After the automatic dissolution of a company in accordance with sect. 195 of the Companies (Consolidation) Act, 1908, certain assets, not mentioned in the final accounts, were realised by the liquidator. Upon motion by the liquidator to declare the dissolution void under sect. 223, the Court ordered that the Attorney-General be served with notice of the motion in order that the rights of the Crown to the money as *bona vacantia* might be considered. At the adjourned hearing the Crown waived its claim, and leave was given to the liquidator, after payment of the costs of all parties, to distribute the residue of the money in the usual way, submitting his accounts to the Board of Trade for approval.

IN RE HENDERSON'S NIGEL CO., LD., [1911] [W. N. 159; 105 L. T. 370—Neville, J.

COMPOSITION WITH CREDITORS.

See **BANKRUPTCY AND INSOLVENCY**.

COMPOUNDING FELONY.

See **CRIMINAL LAW AND PROCEDURE**.

COMPULSORY PURCHASE AND COMPENSATION.**I. RIGHT TO TAKE LAND.** COL.

(a) In General 89
[No paragraphs in this vol. of the Digest.]

(b) Superfluous Land 89
[No paragraphs in this vol. of the Digest.]

II. COMPENSATION.

(a) Principle of Assessment 89
[No paragraphs in this vol. of the Digest.]

(b) Injurious Affection 89
[No paragraphs in this vol. of the Digest.]

III. PROCEDURE.

(a) Generally 89
(b) Notice to Treat 90

(c) Costs 90
(d) Taking Part Only 91

[No paragraphs in this vol. of the Digest.]

Compulsory Purchase and Compensation —
Continued.

COL.

IV. PURCHASE-MONEY IN COURT . . . 91
[No paragraphs in this vol. of the Digest.]**V. PARTICULAR CLASSES OF UNDERTAKINGS.****(a) Railways 91****(b) Waterworks 91**

[No paragraphs in this vol. of the Digest.]

**(c) Housing of the Working Classes
Acts 91**

[No paragraphs in this vol. of the Digest.]

(d) Education Authorities 91

[No paragraphs in this vol. of the Digest.]

I. RIGHT TO TAKE LAND.**(a) In General.**

[No paragraphs in this vol. of the Digest.]

(b) Superfluous Land.

[No paragraphs in this vol. of the Digest.]

II. COMPENSATION.**(a) Principle of Assessment.**

[No paragraphs in this vol. of the Digest.]

(b) Injurious Affection.

[No paragraphs in this vol. of the Digest.]

III. PROCEDURE.**(a) Generally.**

1. *Limitation of Action—Compensation under Lands Clauses Act—Award—Action on—When Statute begins to Run.*—The period within which an action may be brought to enforce an award of compensation made by an arbitrator under the Lands Clauses Act, 1845, is six years from the date of the award.

TURNER *v.* MIDLAND RY. CO., [1911] 1 K. B. [832; 80 L. J. K. B. 516; 104 L. T. 347; 75 J. P. 283—Div. Ct.]

2. *Small Holdings and Allotments—Arbitration—Right of Support—Small Holdings and Allotments Act, 1908* (8 Edw. 7, c. 36), ss. 7, 39 and Sched. I.—*Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 77, 78].—A county council, acting under powers conferred by the Small Holdings and Allotments Act, 1908, and an order of the Board of Agriculture, gave notice to treat to the owner of a farm in their district so that his land might be used for allotments. The order for compulsory purchase incorporated sects. 77 and 78 of the Railways Clauses Consolidation Act, 1845, under which, if not purchased, minerals can be worked by a vendor without responsibility for damage caused by subsidence. At the arbitration to assess the purchase price it was contended on behalf of the council that the arbitrator should take into consideration the fact that the council merely acquired an interest in the surface without a right to support. On the part of the vendor it was contended that inasmuch as the statute prescribed a procedure by which the purchaser could, if he was so minded, acquire the minerals beneath the surface, the arbitrator

could not take the absence of the right to support into account.

HELD—that in assessing the value of the land the arbitrator was to deal with it as if there were no mines to be considered, and nothing but the surface; that the legislature had conferred rights upon purchasers in substitution for the common law right of support; and that the arbitrator was entitled, although he might not be actually bound, to disregard the absence of a right to support when assessing the value.

EARL OF CARLISLE (EXECUTRIX OF) *v.* NOR-
[THUMBERLAND COUNTY COUNCIL, 75 J. P.
539—Channell, J.]

(b) Notice to Treat.

3. *Notice to Treat not served on Mortgagee—Possession taken by Promoters—Subsequent Notice to Treat to Mortgagee—Lands Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 18), ss. 18, 68, 84, 85, 124].—The London County Council was empowered by statute to reconstruct certain tramways and to acquire lands for the purposes of the statute, which incorporated the material provisions of the Lands Clauses Act, 1845. Land required for the purposes of the council's Act belonged to E., to whom the council gave notice to treat under sect. 18 of the Act of 1845. In answer to inquiries whether the land was mortgaged E. gave the dates of two mortgages on the property and the amounts thereby secured, but declined to disclose the names of the mortgagees. The council proceeded under the notice to treat and the jury assessed the compensation. C., one of the mortgagees, refused to be bound by the jury's finding, and the council thereupon served her with notice to treat under sect. 18 of the Act of 1845. C. then brought an action against the council and E., alleging that the council had taken possession of the land, and claiming an account of what was due under her mortgage, damages for injuries to the property, and an injunction. The council then gave C. notice to proceed to assess the compensation payable under the notice to her to treat, and she applied for an interlocutory injunction to restrain the council from proceeding to summon a jury or otherwise proceeding on their notice to her to treat.

HELD—that, assuming the council had taken possession of the property, that fact did not preclude them from their statutory right to give notice to treat to C., and that the injunction must be refused.

COOKE *v.* LONDON COUNTY COUNCIL, [1911] 1
[Ch. 604; 80 L. J. Ch. 423; 104 L. T. 540; 75
J. P. 309; 9 L. G. R. 593—Parker, J.]

(c) Costs.

4. *Arbitration—Award of Amount Previously Offered—Conditional Offer—Costs—Lands Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 18), s. 34].—A railway company against whom a claim for compensation was made in respect of the diversion of a footpath intimated to the claimant's solicitor that they proposed to make a new road "and on the

111. *Procedure—Continued.*

understanding that such road will be made, to make your client an offer of £50 in settlement of his claim":—

HELD—that this was not a good offer within sect. 34 of the Lands Clauses Consolidation Act, 1845, and therefore that the claimant, although only awarded £50 in the arbitration proceedings, was entitled to the costs of such proceedings.

Semble—sect. 34 contemplates nothing more than an offer of a sum of money.

Decision of Phillimore, J. ([1910] 2 K. B. 252; 79 L. J. K. B. 870; 102 L. T. 575; 26 T. L. R. 435) affirmed.

FISHER v. GREAT WESTERN RY. CO., [1911] 1 [K. B. 551; 80 L. J. K. B. 299; 103 L. T. 885; 27 T. L. R. 96; 55 Sol. Jo. 76—C. A.

(d) **Taking Part Only.**

[No paragraphs in this vol. of the Digest.]

IV. **PURCHASE-MONEY IN COURT.**

[No paragraphs in this vol. of the Digest.]

V. **PARTICULAR CLASSES OF UNDERTAKINGS.**

See also No. 2, *supra*; TRAMWAYS, No. 4.

(a) **Railways.**

See MINES, Nos. 3, 4.

(b) **Waterworks.**

[No paragraphs in this vol. of the Digest.]

(c) **Housing of the Working Classes Acts.**

[No paragraphs in this vol. of the Digest.]

(d) **Education Authorities.**

[No paragraphs in this vol. of the Digest.]

CONCEALMENT OF BIRTH.

See CRIMINAL LAW AND PROCEDURE.

CONDITIONS OF SALE.

See SALE OF GOODS; SALE OF LAND.

CONFESSIONS.

See EVIDENCE.

CONFLICT OF LAWS.

	COL.
(a) Miscellaneous	92
(b) Domicil	93
(c) Foreign Judgments	93
(d) Marriage and Divorce	94
(e) Marriage Settlements	94
[No paragraphs in this vol. of the Digest.]	
(f) Wills and Intestacy	94

See also BANKRUPTCY, Nos. 1, 28; INSURANCE, No. 5; PRACTICE, No. 3; SHIPPING, No. 49; SOLICITORS, No. 9.

(a) **Miscellaneous.**

1. *Mortgage—Land Situated Abroad.*—An English contract to give a mortgage on foreign land, although the mortgage has to be perfected according to the *lex situs*, is a contract to give a mortgage which—*inter partes*—is to be treated as an English mortgage and subject to such rights of redemption and such equities as English law regards as necessarily incident to a mortgage.

The equitable rule against clogging the equity of redemption of a mortgage applies to an English contract for an issue of debentures to secure a loan, and will be enforced against a contracting party in the jurisdiction, although the floating security to be created by the debentures comprises foreign land where the clog doctrine is possibly not recognised.

BRITISH SOUTH AFRICA CO. v. DE BEERS [CONSOLIDATED MINES, LD., [1910] 2 Ch. 502; 80 L. J. Ch. 65; 103 L. T. 4; 26 T. L. R. 591; 54 Sol. Jo. 679—C. A.

But see S. C. on appeal under COMPANIES, IX. (a).

2. *Mortmain—Charitable Bequest—Colonial Mortgages—Movable or Immovable—Lex Domicilii—Lex rei sitæ—Adoption of English Law by Colony—Charitable Uses Act, 1736 (9 Geo. 2, c. 36).*—A mortgage on land is an immovable.

Therefore where a domiciled Englishman, who died before the repeal of the Mortmain Act, 1736, by his will gave to charity his residuary estate, which included mortgages on land in Ontario, and at the date of his death the law was the same in Ontario as in England:—

HELD—that the gift of the mortgages was void.

Per Farwell, L.J.—The division of property into movable and immovable is only called into operation when the English Courts have to determine rights between a domiciled Englishman and a person domiciled in a country which does not adopt the English division of property into real and personal; it does not apply where the law is the same in the two countries.

Decision of Eady, J. ([1910] 2 Ch. 333; 79 L. J. Ch. 720; 103 L. T. 127; 26 T. L. R. 516; 54 Sol. Jo. 582) affirmed.

IN RE HOYLES, ROW v. JAGG, [1911] 1 Ch. [179; 80 L. J. Ch. 274; 103 L. T. 817; 27 T. L. R. 131; 55 Sol. Jo. 169—C. A.

Conflict of Laws—Continued.

(b) Domicil.

3. *Husband and Wife—Power of Wife to Acquire Independent Domicil.*—A married woman is incapable of acquiring a domicil separate from her husband where there has not been a decree of judicial separation or its equivalent, except, possibly, in the exceptional cases referred to by Lord Cranworth in *Dolphin v. Robins* ((1859) 7 H. L. Cas. 390, at p. 418), namely, where the husband has abjured the realm, or has deserted his wife and established himself in a foreign country.

IN RE MACKENZIE, *MACKENZIE v. EDWARDS*—[Moss, [1911] 1 Ch. 578; 80 L. J. Ch. 443; 105 L. T. 154; 27 T. L. R. 337; 55 Sol. Jo. 406—Eady, J.]

(c) Foreign Judgments.

4. *Enforcement—Criminal and Civil Proceedings in Foreign Country—Penalty and Damages.*—In respect of injuries sustained by him in France owing to the alleged negligence of the defendant, criminal proceedings were taken against the latter by the French authorities, and in those proceedings the plaintiff intervened, as by French law he was entitled to do, and claimed damages. A fine was inflicted upon the defendant, and subsequently, but in the same proceedings, the defendant was ordered to pay damages to the plaintiff.

HELD—that the French judgment awarding damages to the plaintiff was not a penal but a civil judgment, and that, therefore, it could be sued on in this country.

RAULIN *v. FISCHER*, [1911] 2 K. B. 93; 80 [L. J. K. B. 811; 104 L. T. 849; 27 T. L. R. 220—Hamilton, J.]

5. *Foreign Arbitration—Germany—Enforcement of Award.*—An award in a German arbitration, which requires an "enforcement order" to be enforceable in Germany, is not a decision which the Court ought to recognise as a foreign judgment, and therefore cannot be enforced by action in England.

MERRIFIELD ZIEGLER & CO. *v. LIVERPOOL [COTTON ASSOCIATION AND HAPKE & CO.]* [1911] W. N. 138; 105 L. T. 97; 55 Sol. Jo. 581—Eve, J.]

6. *Enforcement—Rule of Foreign Law Excluding Evidence of Parties—Whether Contrary to Substantial Justice.*—The Court will not refuse to enforce a judgment obtained in an Italian Court merely because by Italian law neither party to a litigation can be called as a witness on his own behalf. The exclusion of such evidence cannot be said to be contrary to substantial justice within the meaning of the rule laid down by Lindley, M.R., in *Pemberton v. Hughes* ([1899] 1 Ch. at p. 790).

SCARPETTA *v. LOWENFELD*, 27 T. L. R. 509—[Lawrence, J.]

(d) Marriage and Divorce.

7. *Marriage in England between Englishwoman and Domiciled Mexican—Irregularity by Mexican Law.*—The petitioner, an Englishwoman, married in England a domiciled Mexican. By Mexican law a marriage is not valid in Mexico unless it is registered by one or other of the parties to it. The marriage of the petitioner and respondent had not been registered in Mexico. The petitioner, by registering the marriage in Mexico, could have obtained a judicial separation, a decree of divorce not being granted in that country. The petitioner having brought a suit for divorce in this country on the ground of the respondent's adultery, cruelty, and desertion:—

HELD—that as the respondent's domicil was Mexican, the Court had no jurisdiction to entertain the suit.

RAMOS *v. RAMOS*, 27 T. L. R. 515—Deane, J.]

(e) Marriage Settlements.

[No paragraphs in this vol. of the Digest.]

(f) Wills and Intestacy.

8. *Power of Appointment—Exercise—General Power under English Settlement—Donee a Domiciled Dutchwoman—Gift by Will in Dutch Form—Admission to Probate in England—Limited Power of Disposition—Dutch Law—English Law—Effect of Exercise of Power.*—Under the will of her father an English lady had a general power of appointment by will over certain funds in England. She married a Dutch gentleman and acquired a domicil in Holland. By Dutch law her power of disposition was limited to seven eighths of her property, her mother, in the events which happened, being entitled to one eighth as "legitimate portion." By her will, which was in Dutch form but admitted to probate in England, she appointed her husband as "sole heir of the whole of which the law in force at the time of her death should allow her to dispose in his favour," and also appointed him executor, with all requisite powers, including the right to take possession of all her real and personal properties according to law. According to Dutch law the exercise of the power had the effect of making the appointed property her assets for all purposes.

HELD—that by English law also the lady had by exercising the power made the appointed property her assets for all purposes; that her power of disposition over it was no greater than over property to which she was absolutely entitled; and consequently that her husband was only beneficially entitled to seven-eighths of the appointed property.

Pouey v. Hordern ([1900] 1 Ch. 492), *In re Mègret* ([1901] 1 Ch. 547), and *In re Bald* ((1897) 76 L. T. 462) distinguished.

In re Hadley ([1909] 1 Ch. 20) followed.

Conflict of Laws—Continued.

Decision of Parker, J. (101 L. T. 202; 55 Sol. Jo. 385) reversed.

IN RE PRYCE, LAWFORD v. PRYCE, [1911] 2 [Ch. 286; 80 L. J. Ch. 525; 105 L. T. 51—C. A.

CONJUGAL RIGHTS.

See HUSBAND AND WIFE.

CONSIDERATION.

See CONTRACT.

CONSPIRACY.

See CRIMINAL LAW AND PROCEDURE;
TORTS; TRADE AND TRADE UNIONS

CONTAGIOUS DISEASES.

See ANIMALS; PUBLIC HEALTH.

CONTEMPT AND ATTACHMENT.

	COL.
(a) Contempt of Court	95
(b) Practice	96

(a) Contempt of Court.

See also BANKRUPTCY, No. 13.

1. *Publication Tending to Influence Result of Proceedings—Newspaper Comments.*—It is a contempt of court for a newspaper to refer to an action pending in the King's Court in any manner that may tend in any degree to interfere with the course of justice, and it cannot be pleaded in excuse either that the reference was only made for political purposes, or that the names of the parties in the action were not mentioned.

THORNHILL v. STEELE-MORRIS, 56 Sol Jo. 34—
[Eady, J.

2. *Interference with Receiver and Manager of Partnership Business—Competing Business Started by Partner—Committal.*—When a receiver and manager of a partnership business has been appointed, a partner who starts a competing business in such a manner as to be likely to injure the original business (e.g., by issuing circulars that the original business is

no longer carried on), may be punished by committal for contempt of court.

KING v. DOPSON, 56 Sol. Jo. 51—Joyce, J.

3. *Disclosing Proceedings Heard in camera.*—It is contempt of Court to disclose the details of proceedings heard in camera.

SCOTT v. SCOTT, [1912] P. 4; 28 T. L. R. 127—
[Deane, J.

(b) Practice.

See also PRACTICE, No. 23.

4. *Attachment—Committal—Motion to Commit—Service of Copy of Affidavit with Notice of Motion—R. S. C., Ord. 52, r. 4.*—By Ord. 52, r. 4, "every notice of motion . . . for attachment . . . shall state in general terms the grounds of the application; and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion."

HELD—that the rule did not apply to a motion to commit, and consequently that upon a motion to commit a copy of the affidavit upon which the motion was founded need not be served with the notice of motion.

Litchfield v. Jones ((1883) 25 Ch. D. 64) discussed.

Decision of Warrington, J. ([1911] 2 Ch. 368; 27 T. L. R. 556) reversed.

TAYLOR, PLINSTON BROTHERS & Co., LD. v.
[PLINSTON, [1911] 2 Ch. 605; 105 L. T. 615;
28 T. L. R. 11; 56 Sol. Jo. 33—C. A.

CONTRACT.

	COL.
I. ASSIGNMENT	96
[No paragraphs in this vol. of the Digest.]	
II. BREACH	96
III. CONSIDERATION	97
IV. CONSTRUCTION	98
V. FORMATION	98
VI. ILLEGALITY	99
VII. IMPOSSIBILITY OF PERFORMANCE	99
[No paragraphs in this vol. of the Digest.]	
VIII. RECTIFICATION	100
IX. STATUTE OF FRAUDS	100
X. UNDUE INFLUENCE	101

See also ARBITRATION, Nos. 4, 5, 6;
BUILDING CONTRACTS, No. 2;
COMPANIES, No. 18; ECCLESIASTICAL LAW, No. 1; INJUNCTIONS, No. 1; MISREPRESENTATION; NEGLIGENCE, No. 21; SALE OF GOODS; SALE OF LAND; TRADE, No. 5.

I. ASSIGNMENT.

[No paragraphs in this vol. of the Digest.]

II. BREACH.

See also DAMAGES, Nos. 1, 2, 4, 6.

1. *Sum Offered by a Third Party in Satisfaction of a Debt—Effect of Acceptance by Creditor*

II. Breach—Continued.

—*Extinction of Debt.*—Where the father of a debtor wrote to the creditor, offering an amount less than that of the debt in full settlement of the debt, and enclosing a draft for that amount, and the creditor cashed and retained the proceeds of the draft, and afterwards brought an action against the debtor for the balance of the debt:—

HELD—that the creditor must be taken to have accepted the amount received by him on the terms upon which it was offered, and, therefore, he could not maintain the action.

Goddard v. O'Brien (1882) 9 Q. B. D. 37) questioned.

Decision of Scrutton, J. (27 T. L. R. 178; 55 Sol. Jo. 238) reversed.

HIRACHAND PUNAMCHAND v. TEMPLE, [1911] 2 K. B. 330; 80 L. J. K. B. 1155; 105 L. T. 277; *sub nom.* PUNAMCHAND SHRICHAND & Co. v. TEMPLE, 27 T. L. R. 430; 55 Sol. Jo. 519—C. A.

III. CONSIDERATION.

See also HUSBAND AND WIFE, No. 11.

2. *Agreement by Creditors Mutually to Forgo Claims—Debtor a Party to Agreement—Claim by One Creditor—Right of Debtor to Set Up Agreement.*—All the directors of a company in liquidation mutually agreed to forgo their respective claims to directors' fees then owing. The liquidator was a party to the agreement on behalf of the company. Subsequently the company sued one of the directors for work done, and the director counterclaimed against the company for his fees earned previously to the agreement.

HELD—that, although there was no consideration for the agreement moving from the company, the fact of the liquidator being a party to it rendered it binding as between the director and the company; and that the agreement was, therefore, a good defence to the counter-claim.

Slater v. Jones (1873) L. R. 8 Ex. 186 applied. *WEST YORKSHIRE DARRACQ AGENCY, LD. v. [COLERIDGE]*, [1911] 2 K. B. 326; 80 L. J. K. B. 1122; 105 L. T. 215; 18 Manson, 307—Horridge, J.

3. *Mistake*—"About Four Years"—*Estoppel—Admissibility of Evidence.*—The appellant agreed to sell his interest in certain leasehold premises to the respondent, the premium to be paid by the latter to the former being at the rate of £15 a year for "each and every year of the existing term" of a certain underlease held by the appellant of other business premises, which term the appellant, by a mistake, but in perfect good faith, told the respondent was "about four years." The appellant, the mistake being discovered, claimed that the premium should be £105, as the lease of the other premises was not "about four years," but seven years unexpired.

HELD—that the words "about four years" were dominant words and were not inserted in the agreement merely as a statement of belief which the respondent was not entitled to rely on.

WATKINSON v. WILSON, 55 Sol. Jo. 617—H. L.

Y. D.

IV. CONSTRUCTION.

See also EDUCATION, No. 8; ELECTRIC LIGHTING, No. 2.

4. *Uncertainty—Agreement to Give "First Option" of Purchasing Premises.*—The plaintiffs, the freeholders of certain property, entered into an agreement with the defendants to give them the "first option" of purchasing any premises that might be designated for dairy purposes on the said property.

HELD—that this agreement was void through uncertainty as to the intention of the parties as to the meaning of the words "first option."

Manchester Ship Canal Co. v. Manchester Racecourse Co. ([1901] 2 Ch. 37) distinguished.

RYAN v. THOMAS, 55 Sol. Jo. 364—Warrington, J.

5. *Music-hall Artist—Engagement for Week—Whether Salary Due before Completion of Week—Garnishee Order.*—A music-hall artist was engaged to perform for one week at £180 per week. Clause 8 of the agreement provided that "in case the artiste shall, except through illness . . . or accident . . . fail to perform at any performance the artiste shall pay to the management as and for liquidated damages a sum equal to the sum which the artiste would have received for such performance. . . ." Clause 12 provided that "the artiste shall not assign, mortgage, or charge the artiste's salary, nor permit the same to be taken in execution. No salary shall be paid for days upon which the theatre is closed by reason of national mourning. . . . No salary shall be payable for any performance at which the artiste may not appear through illness or his own default. . . ." Clause 16 provided, *inter alia*, that "if the artiste shall commit any breach of any of the terms and conditions of this contract, or of the rules, the management . . . may forthwith determine this contract, and the artiste shall have no claim upon them for salary other than a portion for performances played, expenses, costs or otherwise."

HELD—that the agreement provided for a salary for the week, and that unless some of the events, mentioned in the foregoing clauses, happened, no portion of the salary became due to the artiste until the end of the week and until he had fully completed all the performances contemplated; and therefore that the salary could not be garnisheed before the end of the week.

MAPLESON v. SEARS, MOSS'S EMPIRES GARNISHEES, 105 L. T. 639; 28 T. L. R. 30; 56 Sol. Jo. 54—Div. Ct.

V. FORMATION.

See also DEEDS; SPECIFIC PERFORMANCE, No. 3.

6. *Lessee Covenantee with Himself and Others—Validity—Assignee.*—A covenant by one with himself and others jointly is void. Therefore, if a lessee purports to covenant with himself and other lessors jointly, although the covenant if valid is of such a kind as to

V. Formation—Continued.

run with the land, yet an assignee of the term is not bound in law or in equity.

Ellis v. Kerr ([1910] 1 Ch. 529) followed.

NAPTER v. WILLIAMS, [1911] 1 Ch. 361; 80 [L. J. Ch. 298; 104 L. T. 380; 55 Sol. Jo. 235—Warrington, J.

VI. ILLEGALITY.

See also BANKRUPTCY, No. 23; CRIMINAL LAW, No. 57; GAMING, Nos. 1, 2; HUSBAND AND WIFE, No. 11.

7. *Lease of Flat to Kept Mistress—Action for Rent—Knowledge of Lessor's Agent—Ex Turpi Causa.*—The plaintiff sued the defendant for arrears of rent due under a lease of a flat. The plaintiff's agent when making the lease knew that the defendant was the kept mistress of H., and supposed that the money for the rent would be supplied by H. to the defendant.

HELD—that the plaintiff being aware, through his agent, of the source from which the rent came was by receiving the rent participating in the illegal or immoral gains of the defendant; that, therefore, the doctrine *Ex turpi causa non oritur actio* applied; and that the action was not maintainable.

Pearce v. Brooks ((1866) L. R. 1 Ex. 213) applied.

UPHILL v. WRIGHT, [1911] 1 K. B. 506; 80 [L. J. K. B. 254; 103 L. T. 834; 27 T. L. R. 160; 55 Sol. Jo. 189—Div. Ct.

8. *Agreement against Public Policy—Agreement that Criminal Proceedings should be taken for Advertisement Purposes.*—An agreement was entered into between the plaintiffs and the defendant, who was a theatrical manager, whereby the female plaintiff and another lady should wear large hats at a *matinée* performance at the defendant's theatre, that those ladies should in consequence thereof be removed from the theatre, that proceedings should thereupon be taken in the police court against the defendant for assault, and that the plaintiffs should in respect of carrying out this arrangement be paid certain sums of money by the defendant. The scheme, which was arranged solely for advertisement purposes, was duly carried out. The plaintiffs sued the defendant, claiming the sums promised by him.

HELD—that the plaintiffs were not entitled to recover, inasmuch as the agreement between the parties was illegal as being contrary to public policy.

DANN v. CURZON, 104 L. T. 66; 27 T. L. R. [163; 55 Sol. Jo. 189—Div. Ct.

VII. IMPOSSIBILITY OF PERFORMANCE.

9. *Declaration of Liability—Covenant to Repair Drain—Lapse of Time—Acquiescence—Obstruction by Covenantor.*—By an agreement made in the year 1788, a canal company undertook to make a drain or culvert and ditch to drain the garden and meadow of Worcester College, and to maintain and keep

in good repair the said culvert, and to maintain, repair, scour, and cleanse the ditch, which ditch and culvert were subsequently constructed. In 1843 the College executed other works for the purposes of draining the meadow, and after 1851 at no time called on the canal company to fulfil their obligations. In 1901 the College caused certain works to be executed which completely blocked the culvert. In 1909 the College sought a declaration that the canal company were liable under the agreement.

HELD—that the College, by their own action, had rendered the performance of the covenant impossible; that the original liability of the canal company had come to an end for all practical purposes; and that the Court would not make a declaration of a liability that could not be enforced.

WORCESTER COLLEGE, OXFORD v. OXFORD CANAL [NAVIGATION], [1911] W. N. 185; 81 L. J. Ch. 1; 105 L. T. 501; 55 Sol. Jo. 701—Joyce, J.

10. *Subject-matter Ceasing to Exist—Advertisements on Tram-cars—Extension of System.*—In 1907 a tradesman agreed with an advertising contractor to take six advertisement slides on the cars "running at Dumbarton" for a period of five years at a weekly rent. At the date of the contract the tramways in Dumbarton belonged to the X Company, and there were only six cars, and these ran at frequent intervals backwards and forwards within the town of Dumbarton. The tramways were afterwards taken over by the Y company, which in June, 1908, extended the tramway routes into the country beyond the burgh of Dumbarton, and increased the number of the cars to thirty, and thereafter the six cars on which the tradesman's advertisement appeared were only used at infrequent intervals, and ran not only in Dumbarton but over the whole extended routes. The tradesman having refused to pay the rent under the contract after June, 1908, the advertising contractor brought an action against him to recover payment.

HELD—that, after the date on which the tramway system was taken over and extended by the Y company, the pursuer was not in a position to implement the contract, as the cars on which the defender's advertisements appeared were no longer "running at Dumbarton" within the meaning of the contract; that the contract accordingly came to an end at that date; and that the pursuer could not recover rent from the defender for the period after that date.

ABRAHAM v. CAMPBELL, [1911] S. C. 353; 48 [Sc. L. R. 293—Ct. of Sess.

VIII. RECTIFICATION.

[No paragraphs in this vol. of the Digest.]

IX. STATUTE OF FRAUDS.

11. *Sale of Goods—Contract not to be Performed within a Year.*—Sect. 4 of the Statute of Frauds applies to a contract for the sale of goods which is not to be performed within the space of

IX. Statute of Frauds—Continued.
one year from the making thereof. Such a contract is therefore unenforceable unless there is some memorandum or note thereof in writing signed by the party to be charged therewith, or by some person authorised by him.

Decision of Walton, J. ([1910] 2 K. B. 776; 79 L. J. K. B. 1143; 103 L. T. 223; 26 T. L. R. 644; 54 Sol. Jo. 750) affirmed.

PRESTED MINERS GAS INDICATING ELECTRIC
[LAMP Co., LD. *v.* HENRY GARNER, LD.,
[1911] 1 K. B. 425; 80 L. J. K. B. 819; 103
L. T. 750; 27 T. L. R. 139—C. A.]

12. Agreement for Definite Time Exceeding One Year—Power to Determine within Year by Notice—Agreement “Not to be Performed within One Year” — Ambiguity of Statute—Re-opening points of Construction.—An agreement for employment for a period of two years, subject to six months’ notice on either side during that period, is an agreement within sect. 4 of the Statute of Frauds, and must therefore be in writing.

The words of the section being ambiguous, the House of Lords will not re-open points of construction which have been settled by a chain of authorities extending over a long period.

Decision of C. A. ([1911] 2 K. B. 1056; 105 L. T. 320) affirmed.

HANAU *v.* EHRLICH, [1911] W. N. 246; 28 [T. L. R. 113—H. L.]

X. UNDUE INFLUENCE.
See EQUITY, No. 1.

CONTRACTOR.
See BUILDERS, ETC.

CONVERSION.
See TROVER AND CONVERSION.

CONVERSION AND RECONVERSION IN EQUITY.
See EXECUTORS, No. 23.

CONVEYANCES.
See DEEDS AND OTHER INSTRUMENTS; EQUITY; FRAUDULENT AND VOLUNTARY CONVEYANCES; REAL PROPERTY AND CHATTELS REAL; SALE OF LAND.

CONVICTIONS.
See CRIMINAL LAW AND PROCEDURE.

CONVICT’S PROPERTY.
See CRIMINAL LAW AND PROCEDURE.

COPYHOLDS.

I. COURT ROLLS	COL. 102
[No paragraphs in this vol. of the Digest.]	
II. GENERALLY	102
[No paragraphs in this vol. of the Digest.]	
III. MANORIAL CUSTOMS AND TENURES	102
[No paragraphs in this vol. of the Digest.]	
IV. RIGHTS OF THE LORD OF THE MANOR	102

I. COURT ROLLS.
[No paragraphs in this vol. of the Digest.]

II. GENERALLY.
[No paragraphs in this vol. of the Digest.]

III. MANORIAL CUSTOMS AND TENURES.
[No paragraphs in this vol. of the Digest.]

IV. RIGHTS OF THE LORD OF THE MANOR.
See INTOXICATING LIQUORS, No. 6.

COPYRIGHT AND LITERARY PROPERTY.

I. ASSIGNMENT	COL. 103
[No paragraphs in this vol. of the Digest.]	
II. BOOKS	103
[No paragraphs in this vol. of the Digest.]	
III. CATALOGUES	103
[No paragraphs in this vol. of the Digest.]	
IV. DESIGNS	103
V. DRAMATIC PIECES	103
VI. ENCYCLOPÆDIA	103
[No paragraphs in this vol. of the Digest.]	
VII. LETTERS	103
[No paragraphs in this vol. of the Digest.]	
VIII. MUSIC	104
[No paragraphs in this vol. of the Digest.]	
IX. PHOTOGRAPHS	104
X. PICTURES	104
XI. REPORTS IN NEWSPAPERS	105
[No paragraphs in this vol. of the Digest.]	

Copyright and Literary Property—Continued.

XII. SCULPTURE	COL. 105
[No paragraphs in this vol. of the Digest.]	
XIII. VARIOUS	105

I. ASSIGNMENT.

[No paragraphs in this vol. of the Digest.]

II. BOOKS.

[No paragraphs in this vol. of the Digest.]

III. CATALOGUES.

[No paragraphs in this vol. of the Digest.]

IV. DESIGNS.

See also TRADE MARKS AND DESIGNS.

1. *Drawing—Artistic Property—Commercial Use—Registration—Patents and Designs Act, 1907* (7 Edw. 7, c. 29), ss. 49, 53—*Fine Arts Copyright Act, 1862* (25 & 26 Vict. c. 68), s. 1.—A design intended for use in connection with a commercial article, e.g., a drawing reproduced on wrappers used by tradesmen in selling tea, may be properly and effectively registered under the Fine Arts Copyright Act, 1862.

SMITH BROTHERS (WHITEHAVEN), LD. v. [REDFEARN, 131 L. T. Jo. 318—Eve, J.]

V. DRAMATIC PIECES.

2. *Cinematograph—“Place of Dramatic Entertainment” — Showroom — Dramatic Copyright Act, 1833* (3 & 4 Will. 4, c. 15), s. 2.—The defendants, who were producers of cinematograph films, had a room at their place of business fitted up with a cinematograph apparatus, and they issued advertisements inviting the public to see films showing certain scenes of a play which the plaintiffs alleged to be an infringement of their rights.

HELD—without deciding whether the exhibition of the films constituted an infringement of the plaintiffs' rights, that the room where the films were shown on the cinematograph was not a place “of dramatic entertainment” within the meaning of sect. 2 of the Dramatic Copyright Act, 1833, inasmuch as the public were merely invited with the object of getting them to purchase the films.

GLENVILLE v. SELIG POLYSCOPE Co., 27 T. L. R. [554—Channell, J.]

3. *Similarity between Two Pieces merely a Coincidence—Dramatic Copyright Act, 1833* (3 & 4 Will. 4, c. 15).—The representation of a dramatic piece in which the similarities to a piece previously produced are due to mere coincidence—both plays being derived independently from the common stock of dramatic ideas—is not an infringement of the rights given by the Dramatic Copyright Act, 1833, to the author of the play first produced.

ROBL v. PALACE THEATRE, LD., 28 T. L. R. 69— [Hamilton, J.]

VI. ENCYCLOPÆDIA.

[No paragraphs in this vol. of the Digest.]

VII. LETTERS.

[No paragraphs in this vol. of the Digest.]

VIII. MUSIC.

[No paragraphs in this vol. of the Digest.]

IX. PHOTOGRAPHS.

4. *Infringement — Injunction — Damages — Copies Reproduced before Registration — Fine Arts Copyright Act, 1862* (25 & 26 Vict. c. 68).—Notwithstanding the fact that the statutory copyright in photographs may not have been registered, the Court will grant an injunction to restrain the reproduction, without licence from the owners, of any such photographs by any other persons.

Mansell v. Valley Printing Co. ([1908] 2 Ch. 441) applied.

BOWDEN BROTHERS v. AMALGAMATED PICTORIALS, LD., [1911] 1 Ch. 386; 80 L. J. Ch. 291; 103 L. T. 829—Parker, J.

X. PICTURES.

See also No. 1, *supra*.

5. *Drawing—Reproduction without Author's Consent—“Alteration”—Coloured Enlargement—Action to Recover Penalties—Injunction—Fine Arts Copyright Act, 1862* (25 & 26 Vict. c. 68), ss. 7, 8.—In order to constitute an “alteration” in a drawing within the meaning of sect. 7, clause 4, of the Fine Arts Copyright Act, 1862, the alteration must be a material one having regard to the object of the enactment. An alteration in a drawing which might affect the reputation of the author of the drawing as an artist would be a material alteration, and would therefore come within the section. To bring the case within the clause it is not necessary that the sale or publication of the altered work should be fraudulent; it is sufficient if the sale or publication of the altered work as or for the unaltered work of the author is made knowingly.

The plaintiff, who was an artist, made a fine line drawing, which bore his signature, for the defendants for the purpose of being used by them as an advertisement for a certain preparation in which they dealt. The defendants, in whom the copyright of the drawing vested, had the drawing, without the plaintiff's consent, enlarged and coloured, and caused copies of the enlargement with the plaintiff's name thereon to be exhibited in the form of posters as an advertisement of their preparation. In an action by the plaintiff to recover a penalty for infringement of sect. 7, clause 4, of the Act by the publication of copies of the drawing so altered as or for the unaltered work of the plaintiff, and for an injunction, evidence was given that the alteration and colouring of the drawing were such as would be damaging to the plaintiff's reputation as an artist:—

HELD—that as the alteration in the drawing might be damaging to the plaintiff's reputation as an artist, the defendants had committed a breach of sect. 7, clause 4; that the plaintiff was entitled to bring an action under sect. 8 to recover a penalty for the breach; and that the plaintiff was also entitled to an injunction to restrain future breaches.

CARLTON ILLUSTRATORS v. COLEMAN & Co., [LD., [1911] 1 K. B. 771; 80 L. J. K. B. 510; 104 L. T. 413; 27 T. L. R. 65—Channell, J.]

X. Pictures—Continued.

6. Drawing—Infringement—Copy on Wood Block—Registration—Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 1, 4.]—The plaintiff was the owner of the copyright of a drawing, the principal features of which the defendant had copied on to a wood block, so that in the reproductions printed therefrom the said features were transposed, and faced the opposite direction :—

HELD—that the block and reproductions printed therefrom were copies or colourable imitations and infringements of the copyright.

The plaintiff registered himself as co-owner of a copyright with V., who, in fact, had no interest in the copyright. Subsequently he registered himself as sole owner, but entered on the register an assignment to himself of all V.'s interest in the said copyright, whereas V. had in fact no interest :—

HELD—that the first registration was bad, but that the second was valid, and could sustain an action for infringement.

WHITEHEAD v. WELLINGTON, 55 Sol. Jo. 272—
[Warrington, J.]

XI. REPORTS IN NEWSPAPERS.

[No paragraphs in this vol. of the Digest.]

XII. SCULPTURE.

[No paragraphs in this vol. of the Digest.]

XIII. VARIOUS.

7. Searches of Public Records—Contract to Examine and Take Excerpts—Original Notes—Property—Confidentiality—Interdict.]—A searcher of records who was employed to make searches in public records in order to obtain and furnish excerpts of all entries relating to persons of a certain name, made shorthand notes of the entries, and subsequently transcribed these notes and delivered these transcriptions to the person who employed him. In an action by the latter against the searcher for delivery of the shorthand notes and for interdict against communication of them to any person without the pursuer's permission :—

HELD—(1) that the notes belonged to the defender, and (2) that no actual or apprehended injury to the pursuer being involved by any use the defender proposed to make of the notes, interdict ought not to be granted.

EARL OF CRAWFORD v. PATON, [1911] S. C. [1017; 48 Sc. L. R. 870—Ct. of Sess.]

CORONERS.

1. Trial for Manslaughter—Proof of Deposition taken before Coroner—Admissibility of Prisoner's Deposition—Coroners Act, 1887 (50 & 51 Vict. c. 71), ss. 4 (2), 5 (3).]—At an inquest held upon the body of E., the prisoner M. gave evidence upon oath. At the trial of the prisoner for the manslaughter of E., the prosecution tendered the deposition of the prisoner

taken before the coroner as evidence against him.

HELD—that the deposition of the prisoner was admissible in evidence against him under the Coroners Act, 1887, and could be proved by a person who was present at the inquest when the prisoner gave evidence on oath and could swear that the deposition was in the coroner's handwriting and was read over to the prisoner and thereupon signed by him.

R. v. MARRIOTT, 75 J. P. 288; 22 Cox, C. C. [211—Avory, J.]

CORPORATIONS.

See also **FOOD**, No. 11; **PRACTICE**, No. 23.

1. Lease—Construction—Covenant not to Assign Without Consent—Consent not to be Withheld “from a Respectable and Responsible Person”—Assignment to Limited Company—Refusal of Consent.]—In a technical document, such as a lease, the word “person,” in the absence of any context to limit its meaning, includes a person in law, that is to say, a corporation, and the words “respectable and responsible” are not such a context as to limit the meaning of the word “person” so as to exclude a limited company.

Decision of **Neville, J.** ([1910] 1 Ch. 754; 79 L. J. Ch. 431; 102 L. T. 427; 26 T. L. R. 387; 17 *Manson*, 220) reversed.

WILLMOTT v. LONDON ROAD CAR CO., LD., [1910] 2 Ch. 525; 80 L. J. Ch. 1; 103 L. T. 447; 27 T. L. R. 4; 55 Sol. Jo. 873—C. A.

2. Limited Company—Liability to Conviction, —Rogue and Vagabond—Lotteries Act, 1823 (4 Geo. 4, c. 60), ss. 41, 62, 67—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) s. 4—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 2.]—A limited company is not liable to be convicted as a rogue and vagabond under sect. 41 of the Lotteries Act, 1823.

HAWKE v. E. HULTON & CO., LD., [1909] 2 [K. B. 93; 78 L. J. K. B. 633; 100 L. T. 905; 73 J. P. 295; 25 T. L. R. 474; 22 Cox, C. C. 122; 16 *Manson*, 164—Div. Ct.]

CORRUPT PRACTICES.

See **ELECTIONS**.

COSTS.

See **ARBITRATION; BANKRUPTCY AND INSOLVENCY; BILLS OF EXCHANGE; CONTEMPT AND ATTACHMENT; COUNTY COURTS; CRIMINAL LAW AND PROCEDURE; EXECUTION; PRACTICE; SOLICITORS.**

COUNSEL.

See BARRISTERS.

COUNTERCLAIM.

See COUNTY COURTS, No. 6.

COUNTY COURTS.

I. COURTS, JUDGES, AND OFFICERS	COL. 107
II. JURISDICTION AND LAW.	
(a) General	108
(b) Remitted Actions	108
III. PROCEDURE.	
(a) General	109
(b) Statutory Defences	109
IV. COSTS	110
V. EXECUTION	110
VI. ATTACHMENT OF DEBTS	111
[No paragraphs in this vol. of the Digest.]	
VII. JUDGMENT SUMMONS	111
[No paragraphs in this vol. of the Digest.]	
VIII. APPEALS AND NEW TRIALS	111
See also BANKRUPTCY, Nos. 12, 13; FRIENDLY SOCIETIES, No. 1.	

I. COURTS, JUDGES, AND OFFICERS.

1. *Action against Registrar of County Court in his Own Court—Registrar Acting as Solicitor in such Court—Right to Costs as Solicitor—Taxation by Registrar of his Own Bill of Costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 41, 43, 118.*—The registrar of a county court, sued personally in the Court of which he is registrar, is not debarred by sect. 41 of the County Courts Act, 1888, from appearing to defend himself, and he is entitled upon taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting for himself rendered unnecessary.

Where the plaintiffs in an action elect, under sect. 43 of the County Courts Act, 1888, to sue a registrar of a county court in his own Court, although other Courts are open to them under the section, he is entitled to tax the costs of the action. In such circumstances the case is one of necessity within the rule laid down by *Serjeant v. Dale* ((1877) 2 Q. B. D. 558) that "a judge who has an interest in the result of a suit is disqualified from acting, except in cases of necessity, when no other judge has jurisdiction," since sect. 118 of the County Courts Act, 1888, provides that the costs shall be taxed by the registrar of the Court in which they were incurred.

H. TOLPUTT & Co., LD. v. MOLE, [1911] 1 K. B. [87; 80 L. J. K. B. 232; 103 L. T. 607—Div. Ct.]

ON APPEAL.—Appeal dismissed on the grounds that the decision appealed against was right, and that, having regard to what had taken place in the county court and Divisional Court, the question of jurisdiction was not open to the appellants.—[1911] 1 K. B. 836; 80 L. J. K. B. 686; 104 L. T. 148; 55 Sol. Jo. 293—C. A.

2. *Appeal from Decision of Registrar Sitting by Request of Judge as Deputy Judge—Consent of Parties—Registrar not Barrister of Seven Years' Standing—Plaintiff's Claim above £2—Validity of Appointment of Registrar as Deputy Judge—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 18.*—In an action brought in the county court where the claim exceeds £2 the county court judge has no power even with the consent of the parties to appoint as his deputy for the purpose of hearing the action in that capacity a person who is not a barrister of seven years' standing as required by sect. 18 of the County Courts Act, 1888.

McINALLY v. BLACKLEDGE, [1911] 2 K. B. [432; 80 L. J. K. B. 882; 104 L. T. 642—Div. Ct.]

II. JURISDICTION AND LAW.

See also COMPANIES, No. 54.

(a) General.

3. *Cancellation of Lease—Equity Jurisdiction of County Court—"Value of Property not Exceeding £500"—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67.*—Under sect. 67 of the County Courts Act, 1888, a county court judge has no power under the equity jurisdiction of the county court to try an action for the cancellation of an agreement for a lease of any property which exceeds £500 in value, although the interest in the property actually dealt with by the lease is less in value than that amount.

ANGEL v. JAY, [1911] 1 K. B. 666; 80 L. J. [K. B. 458; 103 L. T. 809; 55 Sol. Jo. 140—Div. Ct.]

(b) Remitted Actions.

See also No. 10, *infra*.

4. *Security for Costs—Jurisdiction—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 66—Companies (Consolidation) Act (8 Edw. 7, c. 69), s. 278.*—Where an action of tort has been remitted to the county court under sect. 66 of the County Courts Act, 1888, on the plaintiffs, a limited liability company, failing to give full security for the defendants' costs or to satisfy a judge of the High Court that their cause of action is fit to be prosecuted in the High Court, the county court judge is not deprived of his jurisdiction to make an order for the security of the defendants' costs under sect. 278 of the Companies (Consolidation) Act, 1908, as by sect. 66 of the County Courts Act, 1888, the remitted action and all the proceedings therein are to be tried and taken in the county court as if the action had originally been commenced therein.

PLASYCOED COLLIERIES CO. v. PARTRIDGE, JONES & Co., LD., 104 L. T. 807; 55 Sol. Jo. 481—Div. Ct.]

II. Jurisdiction and Law—Continued.

5. Practice—Action of Contract Remitted to County Court—Claim Amended by Addition of Claim for Tort—Discretion of Judge to Allow—Jurisdiction—County Court Rules, Ord. 14, r. 12; Ord. 33, r. 2—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 66, 87.]—Where an action of contract is remitted from the High Court to the county court and the particulars of claim are amended so as to add a claim for tort, which if the action had been commenced in the county court could have been brought therein, the county court judge has jurisdiction to try the claim as amended, but it is a matter for his discretion whether he will allow the amendment to be made.

SPRING v. FERNANDEZ, 56 Sol. Jo. 110—Div. Ct.

III. PROCEDURE.

See also No. 1, supra.

(a) General.

6. Counter-claim—Adding Party—Alternative Causes of Action—County Court Rules, 1903, Ord. 10, r. 22.]—A person cannot be joined as defendant to a counter-claim, under Ord. 10, r. 22, of the County Court Rules, 1903, against whom an alternative cause of action only is alleged.

TIMES COLD STORAGE CO. v. LOWTHER AND [BLANKLEY, LOWTHER AND BLANKLEY v. TIMES COLD STORAGE CO. AND NEW ZEALAND SHIPPING CO.], [1911] 2 K. B. 100; 80 L. J. K. B. 901; 104 L. T. 637; 55 Sol. Jo. 442—Div. Ct.

7. Removal of Action from County Court to High Court—Certiorari—Discretion of Judge—Action More Fit to be Tried in High Court—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 126.]—The County Courts Act, 1888, sect. 126, provides that "It shall be lawful for the High Court or a judge thereof to order the removal into the High Court, by writ of *certiorari* or otherwise, of any action or matter commenced in the Court under the provisions of this Act if the High Court or a judge thereof shall deem it desirable that the action or matter shall be tried in the High Court. . . ." Upon an appeal by the defendant in an action from the order of the judge in chambers reversing the decision of a Master who had ordered the removal into the High Court of an action commenced in the county court :—

HELD—that the question whether an action should be so removed depends upon whether it is one which in the opinion of the judge is more fit to be tried in the High Court than in the county court.

DONKIN v. PEARSON, [1911] 2 K. B. 412; [80 L. J. K. B. 1069; 104 L. T. 643—Div. Ct.]

(b) Statutory Defences.

8. Public Authorities Protection—Notice of Special Defence—"Statute of Limitations"—County Court Rules, 1903 and 1904, Ord. 10, rr. 14, 18; Form 85—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).]—A

public authority wishing to plead the Public Authorities Protection Act, 1893, as a special defence in a county court do so sufficiently if they plead that "the claim for which the defendants are summoned is barred by a statute of limitations."

GREGORY v. TORQUAY CORPORATION, [1911] 2 K. B. 556; 80 L. J. K. B. 981; 105 L. T. 138; 75 J. P. 446; 55 Sol. Jo. 582; 9 L. G. R. 772—Div. Ct.

AFFIRMED ON APPEAL—132 L. T. Jo. 153; 46 L. J. N. C. 788—C. A.

See S. C. LIMITATION OF ACTIONS, No. 1.

IV. COSTS.

See also No. 4, supra.

9. Depriving Successful Defendant of Costs—Conduct before and during Litigation—Discretion.]—A county court judge, in deciding whether to deprive a successful defendant of costs, is entitled to take into consideration the conduct of the parties both before and during the action.

DANN v. CURZON, 104 L. T. 66; 27 T. L. R. [163; 55 Sol. Jo. 189—Div. Ct.]

10. Recovery of Sum of less than £20 under Ord. 14.—Judgment for Defendant in County Court "with Costs on Scale B"—Action Remitted—Right of Defendant to Costs before Remittal—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 65, 113, 116.]—Where a plaintiff suing in contract for a sum of over £20 under Ord. 14 recovers a less amount, and the defendant obtains leave to defend as to the balance, and, the action being remitted to the county court, judgment is given for the defendant, "with costs on scale B," and under this order the registrar and, on appeal, the county court judge allow items in respect of proceedings under Ord. 14 :—

HELD—that the county court judge had jurisdiction to allow the defendant these items by virtue of his general powers as to costs under sect. 113 of the County Courts Act, 1888, they not being "herein otherwise provided for" by sects. 65 or 116 or any other section of the Act.

MENTORS, LD. v. WHITE, [1911] W. N. 254; [56 Sol. Jo. 143—Div. Ct.]

V. EXECUTION.

11. Judgment for Payment of Debt at Future Date—Garnishee Proceedings Instituted before that Date—Judgment "Still Unsatisfied"—County Court Rules, 1903, Ord. 26, rr. 1, 12, 14.]—Garnishee proceedings are a species of execution, and in the county court a garnishee summons ought not to be allowed to issue unless and until the time has elapsed within which the debt is to be paid, and unless it can be said that the judgment is unsatisfied.

Decision of Div. Ct. ([1911] W. N. 68; 80 L. J. K. B. 499; 55 Sol. Jo. 365) reversed.

WHITE, SON AND PILL v. STENNINGS, [1911] 2 K. B. 418; 80 L. J. K. B. 1124; 104 L. T. 876; 27 T. L. R. 395; 55 Sol. Jo. 441—C. A.

VI. ATTACHMENT OF DEBTS.

[No paragraphs in this vol. of the Digest.]

VII. JUDGMENT SUMMONS.

[No paragraphs in this vol. of the Digest.]

VIII. APPEALS AND NEW TRIALS.

See No. 2, *supra*.

COURTS.

I. HOUSE OF LORDS	COL. 111
[No paragraphs in this vol. of the Digest.]	
II. PRIVY COUNCIL	111
III. COURTS OF LOCAL JURISDICTION .	111
(a) Mayor's Court, London	111
[No paragraphs in this vol. of the Digest.]	
(b) Lancaster Palatine Court	112
(c) Liverpool Court of Passage . . .	112
[No paragraphs in this vol. of the Digest.]	
(d) Preston Court of Pleas	112
[No paragraphs in this vol. of the Digest.]	
(e) Salford Hundred Court	112
[No paragraphs in this vol. of the Digest.]	
IV. IN GENERAL	112
[No paragraphs in this vol. of the Digest.]	

I. HOUSE OF LORDS.

[No paragraphs in this vol. of the Digest.]

II. PRIVY COUNCIL.

1. *Practice—Misdirection—Point not Taken in Court Below.*—[As a general rule neither party to proceedings before the Judicial Committee will be permitted to raise points which have not been taken at any stage in the Court below. Therefore in an action for injuries by negligence, in which contributory negligence was pleaded as a defence, the defendants will not be allowed to take the point that the judge at the trial misdirected the jury on this head when such point was not taken in the grounds of appeal or in argument in the Court below.]

WHITE v. VICTORIA LUMBER CO., [1910] A. C. [606; 80 L. J. P. C. 38; 103 L. T. 323—P. C.]

2. *Appeal to Privy Council—Railway Board of Canada.*—[An appeal lies to the Judicial Committee of the Privy Council from a decision of the Supreme Court of Canada on an appeal thereto from an order of the Railway Board of Canada.]

CANADIAN PACIFIC RY. CO. v. CITY OF [TORONTO CORPORATION AND GRAND TRUNK RY. CO. OF CANADA], [1911] A. C. 461; 81 L. J. P. C. 5; 104 L. T. 724; 27 L. L. R. 448—P. C.]

III. COURTS OF LOCAL JURISDICTION.

See also METROPOLIS, Nos. 24, 25.

(a) Mayor's Court, London.

[No paragraphs in this vol. of the Digest.]

(b) Lancaster Palatine Court.

3. *Jurisdiction of Chancery Division to Restrain Proceedings in Palatine Action—Vexatious Proceeding—Receiver—Chancery of Lancaster Act, 1890* (53 & 54 Vict. c. 23), ss. 3, 4, 5.]—Where a debenture-holder in a company carrying on business in the County Palatine of Lancaster (the debentures creating a first charge on all the company's assets, and stipulating that the company should not create any subsequent charge in priority thereto) commenced a representative action in the Chancery Division of the High Court to enforce the debentures and gave notice of motion for the appointment of a receiver, and, before the motion came on for hearing, the owner of an equitable charge granted by the company after the issue of the debentures on land acquired by it in Manchester commenced an action in the Lancaster Palatine Court, with full knowledge of the High Court action, to enforce his security and obtained *ex parte* the appointment of a receiver, who was subsequently continued on notice, notwithstanding that in the meantime, to the knowledge of the Palatine Court, a different person had been appointed receiver in the High Court action:—

HELD, upon a motion in the Chancery Division by the plaintiff in the High Court action for an injunction to restrain the plaintiff in the Palatine action, who had since been added as a defendant to the High Court action, from further proceeding with the Palatine action—that the Court had jurisdiction to grant the injunction, and that that jurisdiction ought to be exercised on the ground that the Palatine action was vexatious.

Decision of Parker, J. (104 L. T. 308; 55 Sol. Jo. 407) affirmed.

IN RE CONNOLLY BROTHERS, LD., WOOD v. [CONNOLLY BROTHERS, LD.], [1911] 1 Ch. 731; 80 L. J. Ch. 409; 104 L. T. 693—C. A.]

(c) Liverpool Court of Passage.

[No paragraphs in this vol. of the Digest.]

(d) Preston Court of Pleas.

[No paragraphs in this vol. of the Digest.]

(e) Salford Hundred Court.

[No paragraphs in this vol. of the Digest.]

IV. IN GENERAL.

[No paragraphs in this vol. of the Digest.]

COURTS-MARTIAL.

See COURTS; DEPENDENCIES AND COLONIES; ROYAL FORCES.

COVENANT.

See CONTRACT; DEEDS; LANDLORD AND TENANT; SALE OF LAND.

COVERTURE.

See HUSBAND AND WIFE.

COWSHEDS AND DAIRIES.

See PUBLIC HEALTH.

CREMATION.

See BURIAL AND CREMATION.

CRIMINAL LAW AND PROCEDURE.

I. GENERALLY.	COL.
(a) Capacity to Commit Crime	114
(b) Evidence	114
(c) Indictment Generally	119
(d) Jurisdiction	120
(e) Poor Prisoners' Defence Act, 1903	120
[No paragraphs in this vol. of the Digest.]	
(f) Practice, Generally	120
(g) Prevention of Crime	123
(h) Principals and Accessories	128
(i) Restitution of Property	128
[No paragraphs in this vol. of the Digest.]	
(j) Reward	128
[No paragraphs in this vol. of the Digest.]	
II. SPECIFIC OFFENCES.	
(a) Miscellaneous Offences	128
(b) Abortion	130
[No paragraphs in this vol. of the Digest.]	
(c) Assault	130
(d) Bigamy	131
(e) Breach of the Peace	131
[No paragraphs in this vol. of the Digest.]	
(f) Concealment of Birth	131
[No paragraphs in this vol. of the Digest.]	
(g) Conspiracy	131
(h) Cruelty to Children	132
(i) Disorderly Houses	132
[No paragraphs in this vol. of the Digest.]	
(j) Embezzlement	132
[No paragraphs in this vol. of the Digest.]	
(k) Falsification of Accounts	133
(l) Forgery	133
(m) Housebreaking, Burglary, etc.	133
[No paragraphs in this vol. of the Digest.]	
(n) Larceny, False Pretences, and Receiving Stolen Goods	133
(o) Malicious Damage	136
[No paragraphs in this vol. of the Digest.]	
(p) Manslaughter	136
(q) Murder	137
(r) Obscene books	137
[No paragraphs in this vol. of the Digest.]	

II. SPECIFIC OFFENCES—Continued.	COL.
(s) Perjury and False Oaths	137
(t) Treason	138
[No paragraphs in this vol. of the Digest.]	
(u) Vagrancy	138
(v) Women and Girls, Offences against	138
III. CONVICT'S PROPERTY	139
[No paragraphs in this vol. of the Digest.]	
IV. CRIMINAL APPEALS.	
(a) Generally	139
[No paragraphs in this vol. of the Digest.]	
(b) Appeal against Sentence	139
(c) Appeal on Facts	141
[No paragraphs in this vol. of the Digest.]	
(d) Bail	141
(e) Fresh Evidence	141
[No paragraphs in this vol. of the Digest.]	
(f) Insanity	141
(g) Mistakes of Judges	142
(h) Practice	143

See also ANIMALS, No. 1 ; EXTRADITION ; GAMING, No. 5 ; HIGHWAYS, No. 10 ; MAGISTRATES.

I. GENERALLY.

(a) Capacity to Commit Crime.

1. *Insanity—Shooting with Intent to Murder—Impulsive Homicidal Mania.*—Where a prisoner indicted for feloniously shooting with intent to murder had made a connected rational and accurate confession of his guilt, but the medical evidence at his trial was to the effect that he was of unsound mind both then and at the time of the offence and that he suffered from impulsive homicidal mania, the jury were directed that they would be justified in finding the prisoner guilty of the act charged, but insane at the time so as not to be responsible according to law.

R. v. HAY, 75 J. P. 480 ; 22 Cox, C. C. 268—[Darling, J.]

(b) Evidence.

See also Nos. 26, 55, 74, 91, *infra* ; BANKERS, No. 3 ; CORONERS, No. 1 ; MAGISTRATES, No. 13.

2. *Wife or Husband of Prisoner—Compellable Witness—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 4 (1), Sched.*—Under sect. 4, subsect. 1, of the Criminal Evidence Act, 1898, the wife or husband of a person charged with an offence under any enactment mentioned in the Schedule to that Act is not merely a competent but a compellable witness either for the prosecution or for the defence.

R. v. ACASTER, R. v. LEACH, Times, December 21st 1911—C. C. A.

3. *Admission of Criminal Offence—Compellable Witness—Non-Repair of Highway—Evidence Act, 1877 (40 & 41 Vict. c. 14).*—The Evidence Act, 1877, which enacts that on the trial of indictments relating to the non-repair of highways, &c., the defendant and the husband

1. Generally—Continued.

or wife of such defendant are competent and compellable witnesses, does not affect the principle that a witness cannot in any case, civil or criminal, be compelled to admit the commission of a criminal offence.

R. v. HALLETT, 45 L. L. T. 84—Kenny, J., [Ireland.

4. *Incest—Evidence of Previous Conduct—Punishment of Incest Act, 1908* (8 Edw. 7, c. 45), ss. 1, 2—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), s. 1 (6).—A brother and sister were indicted under the Punishment of Incest Act, 1908, which came into force on January 1, 1909, for offences committed in 1910. At the trial, Scrutton, J., admitted evidence as to the birth of a child in 1908 and the prisoners' conduct during 1907 and 1908, tendered by the prosecution for the purpose of showing the nature of the relations between the prisoners.

HELD—that such evidence was admissible.

Decision of C. C. A. reversed.

R. v. BALL, [1911] A. C. 47, 63; 75 J. P. 180, [183; *sub nom.* DIRECTOR OF PUBLIC PROSECUTIONS v. BALL, 80 L. J. K. B. 691; 103 L. T. 738; 55 Sol. Jo. 139; 22 Cox, C. C. 366—H. L.

5. *Examination of Defendant—Question as to Previous Conviction—Question Disallowed—Validity of Conviction—Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), s. 1 (f).—The appellant was charged before justices sitting as a Court of summary jurisdiction with an offence, and gave evidence on his own behalf. The solicitor who appeared for the prosecution asked the appellant in cross-examination whether he had been previously convicted of a similar offence. The justices disallowed the question, as being contrary to sect. 1 (f) of the Criminal Evidence Act, 1898, and no answer was given to it, the solicitor, however, remarking that he had a certified copy of the conviction. The justices convicted the appellant, stating that the above-mentioned incident was entirely ignored by them in arriving at their decision.

HELD—that, though the question ought not to have been asked or the observation made, yet inasmuch as the decision of the justices was not affected thereby the conviction was not invalid.

BARKER v. ARNOLD, [1911] 2 K. B. 120; 80 [L. J. K. B. 820; 105 L. T. 112; 75 J. P. 364; 27 L. L. R. 374—Div. Ct.

6. *Statement Incriminating Appellant made by Fellow-Prisoner.*—Conviction of the appellant quashed where substantially the whole of the evidence against him was a statement by the police that a fellow-prisoner on his arrest made a statement incriminating the appellant, and where the appellant denied the truth of such statement and that he was present at the time it was made.

R. v. HICKEY, 27 L. L. R. 441—C. C. A.

7. *Rebutting Evidence by Prosecution—Admissibility—Discretion of Judge.*—Where

evidence which is relevant to the issue is tendered by the prosecution to rebut the case set up by the defence, it is for the judge at the trial to determine in his discretion whether such evidence should be allowed to be given or not. Even if the judge exercises his discretion in a way different from that in which the Court of Criminal Appeal would have exercised it, that in itself affords no ground for quashing the conviction of the prisoner. If, however, it is shown in any case that the prosecution has done something unfair which has resulted in injustice to the prisoner, the Court of Criminal Appeal may interfere.

R. v. CRIPPEN, [1911] 1 K. B. 149; 80 L. J. [K. B. 290; 103 L. T. 705; 75 J. P. 141; 27 T. L. R. 69; 22 Cox, C. C. 289—C. C. A.

8. *Fresh Evidence during Final Speech.*—By leave of the Court fresh evidence may be called for the defence during the final speech for the Crown.

R. v. MORRISON, 75 J. P. 272; 22 Cox, C. C. 214 [—Darling, J.

9. *Evidence of Identification—Identification at the Police Station—Suggested Description given previously by Detective Officer.*—A., the driver of a van, left his pony and van outside a public-house. On leaving it he saw two men loitering near—S. and another man. On returning to the place the pony and van had disappeared. On the trial of B. for the theft, the evidence for the Crown consisted of the identification of B. by A. and S. Both A. and S. had picked B. out of a line of men at the police station—A. as a man he had seen loitering at the place and S. as a man he had seen drive off with the pony and van.

A., in the course of his evidence, said: "I did not take particular notice of him; I just caught his eye at the minute I brought the van round." S. said he had only seen the back of the man who drove off with the van, but he identified the man at the police station from his front. When asked how it was he was able to identify B., he said: "Because they said he very much resembled the man they had suspicion of." And in answer to the foreman of the jury, he said that a detective officer had given him a description of the man. The vice in the evidence of S. was not pointed out to the jury by the judge in his summing-up, although he pointed out to them that S. said he had not seen his face until he saw it at the police station. B. was convicted.

The Court quashed the conviction on the ground that the evidence of identification was very unsatisfactory, and the case had not been properly left to the jury.

R. v. BUNDY, 75 J. P. 111—C. C. A.

10. *Statement by Prisoner to Police Constable after Arrest—Denial by Prisoner—Evidence of Police Constable—Admissibility.*—The appellant was indicted for larceny by a trick. After his arrest, and after he had been cautioned, he was asked by a police constable where he got the money found upon him, and he replied that most of it was the proceeds

I. Generally—Continued.

of a trick similar to that for which he was arrested and charged. At the trial this was put to the appellant in cross-examination, and on his denying its truth, the police constable was called and gave evidence to the above effect. The appellant was convicted.

HELD—that the trial was not invalidated by this evidence having been admitted.

R. v. Gavin ((1885) 15 Cox, C. C. 656) disapproved.

R. v. BEST, [1909] 1 K. B. 692; 78 L. J. [K. B. 658; 100 L. T. 622; 25 T. L. R. 280; 22 Cox, C. C. 97—C. C. A.

11. Voluntary Statement by Prisoner to Police Officer in Nature of Confession.—A statement in the nature of a confession was made by a prisoner to a police officer. The police officer had not introduced the subject nor held out any hope of pardon to the prisoner.

HELD—that such statement was properly admitted in evidence against the prisoner.

R. v. GODINHO, 28 T. L. R. 3; 56 Sol. Jo. 807—C. C. A.

12. Dying Declaration—Test of Admissibility.—For a statement to be admissible as a dying declaration it is not necessary that the statement should have been made literally “at the point of death.” The material point is that every hope of life must have gone in the mind of the person making the declaration.

R. v. PERRY, [1909] 2 K. B. 697; 78 L. J. [K. B. 1034; 101 L. T. 127; 73 J. P. 456; 25 T. L. R. 676; 53 Sol. Jo. 810; 22 Cox, C. C. 154—C. C. A.

13. Statement by one Prisoner Read Over to Co-prisoner—Admissibility.—The ruling in *R. v. Smith* ((1897) 18 Cox, C. C. 470) went too far if it decided that a statement made by a prisoner is never admissible in evidence against a co-prisoner to whom it is read over unless he admits its truth.

R. v. Bromhead ((1906) 71 J. P. 103) approved.

R. v. THOMPSON, [1910] 1 K. B. 640; 79 L. J. [K. B. 321; 102 L. T. 257; 74 J. P. 176; 26 T. L. R. 252; 22 Cox, C. C. 299—C. C. A.

14. Cross-examination of Prisoner as to Other Offence—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f).—In considering whether, within sect. 1 (f) of the Criminal Evidence Act, 1898, a question put to a prisoner tends to show that he has committed an offence other than that charged in the particular indictment, it must be judged by the light of the other questions put to the prisoner. Any question or series of questions which would reasonably lead the jury to believe that it is being imputed to the prisoner that he has committed another offence tends to show that the prisoner has committed that other offence. Where such a question is improperly put it is the duty of the judge not to wait for any objection from the

prisoner's counsel, but to stop such question himself, and if by mischance the question is put it is the duty of the judge to direct the jury to disregard it and not to let it influence their minds.

The second exception in sect. 1 (f) applies to cases where witnesses to character are called or where evidence of the good character of the prisoner is sought to be elicited from the witnesses for the prosecution, but not to mere assertions of innocence or repudiation of guilt on the part of the prisoner, nor to reasons given by him for such assertion or repudiation.

R. v. ELLIS, [1910] 2 K. B. 746; 79 L. J. K. B. [841; 102 L. T. 922; 74 J. P. 388; 26 T. L. R. 535; 22 Cox, C. C. 330—C. C. A.

See S. C., No. 68, *infra*.

15. Cross-examination as to Alleged Previous Offence—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f) (i).—*Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5.*—C. was indicted under sect. 5 of the Criminal Law Amendment Act, 1885, and the prosecutrix gave evidence that at the time the offence was committed C. told her he had had relations with another servant girl before, and that he hoped the prosecutrix would be as loving to him as that girl had been.

HELD—that C., on giving evidence, could be cross-examined (1) as to whether he had had relations with this other girl, and (2) as to whether this girl was then about fifteen years of age, on the ground that proof that C. had previously committed such an offence (under sect. 5) would be admissible evidence to show that he was guilty of the offence wherewith he was then charged within the meaning of sect. 1 (f) (i) of the Criminal Evidence Act, 1898.

R. v. CHITSON, [1909] 2 K. B. 945; 79 L. J. [K. B. 10; 102 L. T. 224; 73 J. P. 491; 25 T. L. R. 818; 53 Sol. Jo. 716; 22 Cox, C. C. 286—C. C. A.

16. False Pretences—Evidence of other Acts.—The appellant was convicted of obtaining a pony and trap by falsely pretending that he wanted them for his wife, who, he said, was an invalid and could not select them herself. At the trial evidence was admitted that the appellant had obtained credit for oats and provender from two other people by the false pretence that he was living at a certain address to which stables were attached.

HELD—that such evidence was improperly admitted, as it only amounted to a suggestion of a generally fraudulent disposition and did not show a systematic course of fraud, that such evidence might have influenced the jury, and that the conviction must therefore be quashed.

R. v. FISHER (No. 1), [1910] 1 K. B. 149; 79 L. J. K. B. 187; 102 L. T. 111; 74 J. P. 104; 26 T. L. R. 122; 22 Cox, C. C. 270—C. C. A.

17. Cross-examination of Fellow Prisoner—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (e).—As there are no words in

1. Generally—Continued.

sect. 1 (c) of the Criminal Evidence Act, 1898, preventing the cross-examination of one prisoner giving evidence on behalf of another, such a cross-examination is right and proper even though the questions asked have some bearing on the guilt or innocence of the prisoner giving evidence.

R. v. ROWLAND, [1910] 1 K. B. 458; 79 L. J. [K. B. 327; 102 L. T. 112; 71 J. P. 114; 26 T. L. R. 202; 22 Cox, C. C. 273—C. C. A.]

18. Evidence of Identification.—[Observations by Lord Alverstone, C.J., as to methods of identification of accused persons.

R. v. CHAPMAN, 28 T. L. R. 81—C. C. A.]

(c) Indictment Generally.

See also Nos. 39, 47, 48, 71, 79, *infra*:
MAGISTRATES, No. 3.

19. Plea of Not Guilty—Subsequent Plea of Autrefois Acquit—Admissibility—Indictment for Murder and Manslaughter—Acquittal Directed on Indictment for Murder.—[Where on an indictment the prisoner has pleaded not guilty, he is not entitled to advance subsequently the plea of *autrefois acquit*, while the plea of not guilty remains on the record.

Quære, whether, where a prisoner is indicted for murder and also for manslaughter, and the prosecution electing first to offer no evidence on the indictment for murder, the jury, by direction of the judge, acquit the prisoner, he can, on the indictment for manslaughter, obtain his acquittal by pleading *autrefois acquit*.

R. v. BANKS, [1911] 2 K. B. 1095; 27 T. L. R. [575; 55 Sol. Jo. 727—C. C. A.]

20. Riot—Conviction for Assault.—[The appellant and ten others were indicted for that they "unlawfully, riotously, and routously did assemble and gather together to disturb the peace of . . . the King, and being so assembled . . . in and upon (A.B.) . . . then and there being, unlawfully, riotously, and routously did make and assault," &c.]

HELD—that on this indictment the jury could convict the appellant of an assault.

Statement of the law in Archbold's Criminal Pleading (24th ed.), at p. 228, that "at common law a defendant may be convicted of a less aggravated felony or misdemeanour on an indictment charging a felony or misdemeanour of greater aggravation, provided that the indictment contains words apt to include both offences," approved.

R. v. O'BRIEN, 104 L. T. 113; 75 J. P. 192; 27 [T. L. R. 204; 55 Sol. Jo. 219; 22 Cox, C. C. 374—C. C. A.]

21. Deaf Mute—Inability to Plead or Understand Proceedings—Detention under Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2.—[At the trial of a prisoner, who was stone deaf and was unable to read or write, the

jury found that he was mute by the visitation of God, and that he was incapable of pleading to, or taking his trial upon, the indictment, or of understanding and following the proceedings by reason of his inability to communicate with, or be communicated with by, others. Thereupon the judge ordered that the prisoner should be treated as non-sane and be kept in custody until his Majesty's pleasure should be known.

HELD—that the order was right.

R. v. THE GOVERNOR OF H.M. PRISON AT [STAFFORD, EX PARTE EMERY, [1909] 2 K. B. 81; 78 L. J. K. B. 629; 100 L. T. 993; 73 J. P. 284; 25 T. L. R. 440; 22 Cox, C. C. 143—Div. Ct.]

(d) Jurisdiction.

See also No. 78, *infra*.

22. Consent of Attorney-General Necessary to Proceedings—Consent not Obtained—Explosive Substances Act, 1883 (46 Vict. c. 3), ss. 2, 7.]

—The appellant was convicted on indictment under sect. 2 of the Explosive Substances Act, 1883, for feloniously causing an explosion of a nature likely to endanger life, or of a nature to cause serious injury to property. The consent of the Attorney-General to the prosecution required by sect. 7 of the Act had not in fact been given.

HELD—that, as the Attorney-General's consent had not been obtained to the proceedings, there was no jurisdiction to try the indictment, and, that being so, the Court of Criminal Appeal had no power to deal with the case under sect. 4, sub-sect. 1, of the Criminal Appeal Act, 1907, as one in which no substantial miscarriage of justice has occurred, and that the conviction must be quashed.

R. v. BATES, [1911] 1 K. B. 964; 80 L. J. K. B. [507; 104 L. T. 688; 75 J. P. 271; 27 T. L. R. 314; 55 Sol. Jo. 410—C. C. A.]

(e) Poor Prisoners' Defence Act, 1903.

[No paragraphs in this vol. of the Digest.]

(f) Practice generally.

See also No. 64, *infra*.

23. Recognisance—Prisoner Bound over to Appear for Judgment if Called Upon—Breach of Condition of Recognisance—Power of Quarter Sessions to Sentence Prisoner—Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), ss. 1, 6.]—The appellant was convicted at quarter sessions on an indictment for larceny, and was required to enter into a recognisance under sect. 1 (2) of the Probation of Offenders Act, 1907, to appear for sentence when called upon. The recognisance contained conditions, and for a breach of one of these the appellant was subsequently called upon to appear before the quarter sessions for sentence. It was contended on behalf of the appellant that s. 6 (5) of the Probation of Offenders Act, 1907, only applied to persons bound over to appear for conviction and sentence, and did not apply to a person bound over to appear for sentence only, and therefore that there was no jurisdiction to pass sentence upon the appellant.

I. Generally—Continued.

HELD—that, apart from any statutory provisions, the quarter sessions had power to bind over the appellant to appear for sentence when called upon, and that that Court had jurisdiction to pass sentence upon the appellant quite apart from the provisions of sect. 6 (5) of the Act of 1907.

R. v. SPRATLING, [1911] 1 K. B. 77; 80 L. J. [K. B. 176; 103 L. T. 704; 75 J. P. 39; 27 T. L. R. 31; 55 Sol. Jo. 31; 22 Cox, C. C. 348—C. C. A.

24. Murder Trial—Illness of Jurymen—Juryman leaving Jury-box—Bailiff not sworn.—The rule that the jury must not separate during a trial for murder does not mean that in no circumstances must they physically part from one another. The rule is subject to the qualification that upon an emergency, or where it is necessary, a juror may leave the rest of his fellows.

During a trial for murder one of the jurymen was taken ill, and it being necessary for him to leave the Court for some time, he was accompanied by an usher who was not sworn as a jury bailiff for the purpose of then taking charge of him and by doctors, who examined him and asked him questions in reference to his condition. There was no suggestion that during the time the jurymen was absent from the Court he was tampered with in any way. After his recovery the trial proceeded.

HELD—that the fact that the jurymen was allowed to leave the Court without being in charge of a sworn bailiff did not constitute a mistrial.

R. v. CRIPPEN, [1911] 1 K. B. 149; 80 L. J. [K. B. 290; 103 L. T. 705; 75 J. P. 141; 27 T. L. R. 69; 22 Cox, C. C. 289—C. C. A.

25. Sentence—Other Offences Taken into Consideration.—The judge, in sentencing a prisoner for an offence, is entitled to, and it is desirable that he should, take into consideration any other charge of the same character which the prisoner admits, even though the prisoner may not have been committed for trial on such other charge. Where the other offence is not admitted by the prisoner, the judge ought not to take it into consideration. In cases where the other offence is admitted, and there has been a committal in respect of it, the judge should be satisfied that the authorities prosecuting the other offence consent to it being taken into consideration, and, if they do not consent, he ought not, as a matter of course, to take it into consideration. If there has been a committal in another county in respect of a different class of offence, and the prosecution does not consent, the other offence ought not to be taken into consideration, and, even where the prosecution consent, such other offence, if there has been a committal in respect of it in another county, ought not, as a matter of course, to be taken into consideration.

R. v. McLEAN, [1911] 1 K. B. 332; 80 L. J. [K. B. 309; 103 L. T. 911; 75 J. P. 127; 27 T. L. R. 138; 22 Cox, C. C. 362—C. C. A.

26. Sentence—Statements by Police Officer after Conviction of Prisoner.—Where, after a prisoner has been convicted, a police officer makes a statement to the judge as to the prisoner's antecedents, and the prisoner does not challenge the accuracy of that statement, the judge is entitled to take it into consideration on the question of sentence, notwithstanding that some parts of the statement may be hearsay. If, however, the prisoner challenges any part of the statement, the judge should then inquire into it, and if he thinks it of sufficient importance that it ought to be proved by legal evidence he can, if necessary, adjourn the case for such proof to be forthcoming; or, instead of doing this, he can disregard the disputed part of the statement altogether.

R. v. CAMPBELL, [1911] W. N. 47; 75 J. P. [216; 27 T. L. R. 256; 55 Sol. Jo. 273—C. C. A.

27. Sentence—Previous Convictions—Willingness to Work.—Where there is evidence that a prisoner has shown willingness to work and persons have been willing to employ him, it may not be advisable to inflict a severe sentence upon him merely because he has had many previous convictions.

R. v. MYLAND, 27 T. L. R. 256—C. C. A.

28. Criminal Information—Assault.—The Court declined to grant a rule for a criminal information against a superintendent of police, being of opinion (1) that the affidavits did not establish any personal connection of the superintendent with assaults alleged to have been committed by police officers under his control, and (2) that as there was nothing to show that ordinary proceedings for assault would be an insufficient remedy, there was no *prima facie* case made out for the granting of a criminal information.

EX PARTE BOWEN, 27 T. L. R. 179—Div. Ct.

29. Costs—Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1 (2).—When an order has been made under sect. 1 of the Costs in Criminal Cases Act, 1908, that the costs of the prosecution should be paid out of the funds of the county, the Central Criminal Court has discretion to allow the prosecutor in a criminal case costs on a scale other than that usually allowed by the rules of that Court, but such an order will not be made save under exceptional circumstances.

R. v. STUDDS, 75 J. P. 248—Cent. Crim. Ct.

30. Recognisance—Bond of Probation—Jurisdiction—Judge Entitled to Convict and Sentence on Breach of Bond—Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 6, sub-s. 5.—Where under sect. 1, sub-sect. 2, of the Probation of Offenders Act, 1907, an accused has been discharged conditionally on his entering into a recognisance to appear for conviction and sentence when called upon, in the event of a breach of the probation bond a magistrate other than the magistrate who originally tried the accused and put him on probation can

I. Generally—Continued.

competently convict and sentence for the original offence.

MINTYRE v. HENDERSON, [1911] S. C. (J.) [73; 48 Sc. L. R. 588; 6 Adam, 434—Ct. of Justy.]

(g) Prevention of Crime.

See also No. 27, *supra*.

31. Habitual Criminal—Charge—Practice—Proof of Consent of Director of Public Prosecutions—Evidence—Course of Life Previous to Last Conviction—Proof of Age—Deferring Sentence—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.]—The consent of the Director of Public Prosecutions to the insertion of a charge that a prisoner is a habitual criminal may be proved by the person who has been in communication on the subject with the Director of Public Prosecutions, and who states that he has received in the ordinary course a document giving such consent.

The evidence intended to establish that a prisoner is leading persistently a dishonest or criminal life must be brought down to the date of the charge, but it depends upon the circumstances of each case whether evidence as to the prisoner's course of life previous to his last conviction is or is not admissible.

Unless it is obvious to the jury that a prisoner against whom a charge of being a habitual criminal is preferred must have been over the age of 16 at the time of the first of the three convictions founded on by the prosecution, evidence must be given that the prisoner had attained the age of 16 at that time. Such evidence may be given by a prison officer deposing that the prisoner gave his age as stated in the calendar.

Where a prisoner is charged with an offence and is also charged with being a habitual criminal, and pleads guilty to, or is found guilty of, the main charge, it is not necessary that the sentence on that charge should be pronounced before the jury proceed to inquire whether the prisoner is a habitual criminal.

R. v. TURNER, [1910] 1 K. B. 346; 79 L. J. [K. B. 176; 102 L. T. 367; 74 J. P. 81; 26 T. L. R. 112; 54 Sol. Jo. 164; 22 Cox, C. C. 310—C. C. A.]

32. Habitual Criminal—Practice—Notice of Intention to Insert Charge—Seven Days' Notice—Contents of Notice—Proof—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10 (4).]—The seven days' notice referred to in sect. 10 (4) (b) of the Prevention of Crime Act, 1908, which has to be given to the proper officer of the Court by which an offender is to be tried and to the offender that it is intended to insert in the indictment a charge of being a habitual criminal means a seven clear days' notice, and there must be evidence of its receipt, not necessarily by the officer of the Court himself, but by someone who can testify to the fact. The notice to the offender must, in addition to specifying the previous convictions, state

the other grounds upon which it is intended to found the charge of being a habitual criminal; it is not enough merely to state in the notice that the offender is leading persistently a dishonest or criminal life. If such notice to the offender is not produced at the trial, secondary evidence may be given of its contents.

R. v. TURNER, [1910] 1 K. B. 346; 79 L. J. [K. B. 176; 102 L. T. 367; 74 J. P. 81; 26 T. L. R. 112; 54 Sol. Jo. 164; 22 Cox, C. C. 310—C. C. A.]

33. Habitual Criminal—Trial—Practice—Plea of Guilty to Crime Charged—Swearing of Jury to try Habitual Criminal Charge—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.]—An indictment for shopbreaking also contained a charge under sect. 10 of the Prevention of Crime Act, 1908, alleging that the prisoner was a habitual criminal. The prisoner pleaded guilty to the shopbreaking, but pleaded not guilty to being a habitual criminal. The jury was sworn to try the latter charge as if for a felony.

HELD—that there was no objection to the jury being so sworn, but that it would have been sufficient if they had been sworn as if to try a misdemeanour.

R. v. TURNER, [1910] 1 K. B. 346; 79 L. J. [K. B. 176; 102 L. T. 367; 74 J. P. 81; 26 T. L. R. 112; 54 Sol. Jo. 164; 22 Cox, C. C. 310—C. C. A.]

34. Habitual Criminal—Consent of Director of Public Prosecutions—Notice to Accused—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.]—Where a charge under the Prevention of Crime Act, 1908, of being a habitual criminal is inserted in the indictment against an accused person it is the duty of the clerk of assize or clerk of the peace to satisfy himself before sending the indictment to the grand jury that the consent of the Director of Public Prosecutions to the insertion of such charge has been given. The prosecution need not prove as part of their case that such consent has been given unless the fact is challenged by the accused, in which case the fact may be proved as determined by the Court in *R. v. Turner (supra)*.

The notice served upon an accused person under sect. 10, sub-sect. 4, of the Prevention of Crime Act, 1908, need not, in addition to specifying the previous convictions of the accused, also state other grounds for founding the charge that the accused is leading persistently a dishonest or criminal life, unless the prosecution intend to rely upon other grounds than the previous convictions.

R. v. Turner (supra) considered and explained.

R. v. WALLER, [1910] 1 K. B. 364; 79 L. J. [K. B. 184; 102 L. T. 400; 74 J. P. 81; 26 T. L. R. 142; 54 Sol. Jo. 164; 22 Cox, C. C. 319—C. C. A.]

35. Habitual Criminal—Notice of Intention to insert Charge—Evidence given of Other Grounds

I. Generally—Continued.

than Specified Convictions—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10 (4) (b).—A notice to an appellant under sect. 10 (4) (b) of the Prevention of Crime Act, 1908, only specified the three statutory convictions and certain other convictions of the appellant, and did not mention any other ground upon which it was intended to insert in the indictment a charge of being a habitual criminal. At the trial a detective gave evidence that the appellant had lived by thieving and had done no work for ten years. The appellant was convicted of being a habitual criminal.

The Court quashed the conviction of the appellant as a habitual criminal on the ground that it appeared that the statement of the detective was a ground upon which it was intended to frame the charge of being a habitual criminal, of which the appellant had had no notice pursuant to sect. 10 (4) (b) of the Prevention of Crime Act, 1908. Lord Alverstone, C.J., stated that no precedent was created by the decision.

R. v. MORAN, 75 J. P. 110—C. C. A.

36. Habitual Criminal—Sentence—Power of Court to Impose more Severe Sentence in Order to give Sentence of Preventive Detention—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.—The length of sentence imposed upon a prisoner should depend upon the nature of the offence of which he has been convicted or to which he has pleaded guilty, and the Court cannot impose a more severe sentence than the offence merits in order to give itself the power to pass a sentence of preventive detention.

R. v. JONES (No. 1), [1910] W. N. 259; 75 J. P. 125; 27 T. L. R. 108—C. C. A.

37. Habitual Criminal—Convictions Not Proved Mentioned in Summing Up—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.—A conviction for being a habitual criminal under sect. 10 of the Prevention of Crime Act, 1908, was quashed on the ground that the judge in summing up the case to the jury had mentioned other convictions than those proved against him, and the Court were unable to say that if they had not been mentioned the jury would have arrived at the same conclusion.

R. v. CULLIFORD, 75 J. P. 232—C. C. A.

38. Habitual Criminal—Evidence—Only Three Statutory Convictions Proved—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.—It is no objection in law to the conviction of a person for being a habitual criminal that only the three statutory convictions stated in the notice served on the accused under sect. 10 of the Prevention of Crime Act, 1908, are alleged against him. A great deal depends upon the nature of the offences for which the accused has been convicted. If the three convictions alleged were not in respect of offences showing deliberation or system, it may not be right to take them as being of themselves sufficient to establish the charge of being a habitual criminal; if, on the other hand, the three convictions are in respect of offences requiring system,

planning, and deliberation, and if they have been repeated almost at the first opportunity after the accused's release from a previous sentence, they may well be sufficient for the jury arriving at the conclusion that the accused intended to live by crime.

R. v. EVERITT, 27 T. L. R. 570—C. C. A.

39. Habitual Criminal—No Averment in Indictment—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.—An indictment framed under sect. 10 of the Prevention of Crime Act, 1908, alleged, following the words of subsect. 2 (a), that the prisoner had been three times previously convicted of a crime since he was 16, and that he was leading persistently a dishonest life; but it contained no averment that the prisoner was a habitual criminal.

HELD—that the indictment was good, but that, as a matter of pleading, an averment that the prisoner was a habitual criminal ought properly to have been inserted.

R. v. SMITH, R. v. WESTON, [1910] 1 K. B. [17; 79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13; 26 T. L. R. 23; 54 Sol. Jo. 137; 22 Cox, C. C. 219—C. C. A.

40. Habitual Criminal—No Evidence by Prosecution as to Prisoner's Conduct since last in Prison—No Miscarriage of Justice—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1).—Conviction of a prisoner as a habitual criminal affirmed, notwithstanding that no evidence had been given by the Crown as to the prisoner's conduct between February, 1909, when he came out of prison, and October, 1909, when he was arrested on a fresh charge—no real miscarriage of justice having taken place.

R. v. ROWLAND, 102 L. T. 112; 26 T. L. R. [202; 22 Cox, C. C. 273—C. C. A.

41. Habitual Criminal—Considerable Interval since Accused last in Prison—Evidence of Habitual Criminality—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.—In order that a conviction as a habitual criminal may stand where a considerable interval has elapsed since the man charged was last in prison, not only should the attention of the jury be drawn to the interval, but some evidence should be given that the accused was relapsing into crime because it was his natural disposition to do so. That evidence may take many forms, e.g., association with criminals, the possession of funds not consistent with mere charity and not explained by evidence of employment, the character of the crime itself, whether similar to those for which the accused has been convicted in the past or not, or evidence that the character of the crime charged showed that the ground must have been carefully prepared.

R. v. HEARD, *Times*, December 19th, 1911—[C. C. A.

42. Habitual Criminality—Proof—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10 (2).—In order to warrant conviction of habitual

I. Generally—Continued.

criminality under sect. 10 of the Prevention of Crime Act, 1908, it is necessary for the Crown, in addition to proving that the accused has been three times previously convicted of crime, to prove in evidence that he was in fact leading a dishonest or criminal life at the time of his apprehension.

STIRLING *v.* H. M. ADVOCATE, [1911] S. C. (J.) [81; 48 Sc. L. R. 756; 6 Adam, 451—Ct. of Justy.]

43. *Preventive Detention following Penal Servitude—Right to Appeal against Both Sentences—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 11.]—If a person who has been sentenced to penal servitude and also to preventive detention under the Prevention of Crime Act, 1908, appeals, under sect. 11 of that Act, against the latter sentence, the Court of Criminal Appeal will allow him, without formally obtaining leave, to appeal also against the sentence of penal servitude.

R. *v.* SMITH, R. *v.* WESTON, [1910] 1 K. B. [17; 79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13; 26 T. L. R. 23; 54 Sol. Jo. 137; 22 Cox, C. C. 219—C. C. A.]

44. *Retrospective Operation of Statute—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), ss. 10 (1), 19 (2).]—Sect. 10 of the Prevention of Crime Act, 1908, applies to a person convicted of a crime committed between the date of the passing of the Act and the date of its coming into operation, the trial and conviction taking place after the latter date.

R. *v.* SMITH, R. *v.* WESTON, [1910] 1 K. B. [17; 79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13; 26 T. L. R. 23; 54 Sol. Jo. 137; 22 Cox, C. C. 219—C. C. A.]

45. *Prevention of Crime—Suspicious Circumstances after Two Previous Convictions—Prevention of Crimes Act, 1871* (34 & 35 Vict. c. 112), s. 7.]—*Per* Lord Coleridge, J.—This Court has said before, and this Court repeats, that the provisions of sect. 7 of the Prevention of Crimes Act, 1871, being very stringent, are not to be invoked on mere suspicion. There must be positive testimony to enable the police to bring a proper prosecution. Where the circumstances are consistent with the prisoner being in the public place for a purpose other than that suggested by the police, he should not be charged.

R. *v.* PAVITT, 75 J. P. 432—C. C. A.

46. *Borstal System—Sentence—Preventive Detention Committed by Home Secretary to Imprisonment with Hard Labour—Appeal—Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), s. 4—*Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 7.]—Under sect. 4, sub-sect. 3, of the Criminal Appeal Act, 1907, the Court of Criminal Appeal can only deal with the sentence passed upon a prisoner at his trial.

Semble, it cannot directly deal with the commitment by the Home Secretary, under sect. 7 of the Prevention of Crime Act, 1908, of the un-

expired residue of a term of preventive detention into a term of imprisonment.

R. *v.* KEATING, [1910] W. N. 198; 103 L. T. [322; 74 J. P. 452; 26 T. L. R. 686; 22 Cox, C. C. 343—C. C. A.]

(h) Principals and Accessories.

47. *Prisoner Indicted for Burglary and for Receiving—Verdict of Guilty as Accessory before the Fact and of Receiving.*]—Where a man is indicted for burglary, with a second count in the indictment for receiving, and the jury find him guilty of being an accessory before the fact to the burglary and of receiving, the verdict will stand.

R. *v.* Hughes (1860) Bell, C. C. 242 followed.
R. *v.* GODSPEED, 75 J. P. 232; 27 T. L. R. [255; 55 Sol. Jo. 273—C. C. A.]

48. *Accessory after the Fact—Sufficiency of Indictment—"Receive, Harbour and Maintain"—Principal in Custody—Removal of Incriminating Articles.*]—The appellant was charged with the felony of being an accessory after the fact to a felony committed by one George Green. The indictment alleged that she, "well knowing the said George Green to have done and committed the said felony . . . did feloniously receive, harbour, and maintain" the said George Green. There was evidence that the appellant, after Green's arrest, and for the purpose of preventing his conviction, removed from a workshop occupied by him a number of fragments of coining moulds, which were adducible and which were in fact produced against him. The jury were directed that if they were satisfied that the appellant removed the things from the workshop knowing that he was guilty of committing the felony charged against him, and did so for the purpose of assisting him to escape conviction, they should find her guilty. The jury returned a verdict of guilty.

HELD—that the indictment properly charged the appellant with being an accessory after the fact, and that the direction was right, in accordance with the law as stated in Hawkins's "Pleas of the Crown," Book 2, c. 29, ss. 25, 26.

R. *v.* LEVY, [1912] 1 K. B. 138; [1911] W. N. [239; 28 T. L. R. 93; 56 Sol. Jo. 143—C. C. A.]

(i) Restitution of Property.

[No paragraphs in this vol. of the Digest.]

(j) Reward.

[No paragraphs in this vol. of the Digest.]

II. SPECIFIC OFFENCES.

See also No. 4, *supra*.

(a) Miscellaneous Offences.

49. *Sending Letter Threatening to Murder—Special Verdict—Effect—Offences against the Person Act, 1861* (24 & 25 Vict. c. 100), s. 16.]—The appellant was indicted under sect. 16 of the Offences against the Person Act, 1861, for sending a letter to M., threatening to murder R. At the trial the judge left the following questions to the jury:—" (1) Is defendant guilty or not guilty

II. Specific Offences—Continued.

of maliciously sending the letter threatening to murder R. ? (2) Did he intend to murder R., or was the threat 'bluff' and made in order to call attention to his grievances ? (3) Did the defendant send the letter of June 15 with the intention of so alarming M. as to the safety of R.'s life that M. and his friends would support defendant's claims against the Home Secretary and the police authorities ? " The jury did not reply directly to the questions, but returned the following verdict :— " We are of opinion that defendant wrote the letter of June 15 with the object of pressing M. and his friends to support his claims against the Home Secretary and the police authorities. We are further of opinion that he did not intend to murder R., and that the threat was 'bluff' and made in order to call attention to his grievances." The judge considered this finding equivalent to a verdict of guilty, and ordered a verdict of guilty to be entered.

HELD—that the judge was right in treating the verdict as one of guilty.

R. v. SYME, 75 J. P. 535 ; 27 T. L. R. 562 ; [55 Sol. Jo. 704—C. C. A.

50. Obstructing Police in Execution of Duty—Deputation—Petition to Member of Parliament—Crowd Collected—Refusal of Deputation to Depart—Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c. 75), s. 2.]—The appellants were convicted of obstructing the police in the execution of their duty. The duty of the police was to keep clear and unobstructed the St. Stephen's entrance to the House of Commons. The appellants having formed a deputation to present a petition to the Prime Minister, which he refused to receive, caused a crowd to be collected about this entrance by refusing to leave it and impeded the police in their efforts to keep it unobstructed.

HELD—without throwing any doubt on the right of a person to present a petition to a member of Parliament, that the conviction was right.

PANKHURST v. JARVIS, 101 L. T. 946 ; 74 [J. P. 64 ; 26 T. L. R. 118 ; 22 Cox, C. C. 228—Div. Ct.

51. Obstructing Police in Execution of Duty—"Picketing" Official Residence—Crowd Collecting in Street—Refusal of "Pickets" to Leave—Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 52—Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c. 75), s. 2.]—The appellants, who were members of the Women's Freedom League, assembled in Downing Street with the object of presenting a petition to the Prime Minister. They were informed that the Prime Minister could not see them, but they waited on for several hours outside his residence, and, in consequence of their presence, a crowd collected. Later, when the Prime Minister drove up, the appellants attempted to force some document upon him. As the appellants, who stated that they were pickets of the league, refused to leave Downing

Street, they were arrested and charged with obstructing the police in the execution of their duty. The magistrate having convicted the appellants :—

HELD—that the conviction was right.

DESPARD v. WILCOX, 102 L. T. 103 ; 74 J. P. [115 ; 26 T. L. R. 226 ; 22 Cox, C. C. 258—Div. Ct.

52. Incest—Accomplice—Permission or Submission of Woman—Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), s. 2.]—Sembles, to constitute the offence of incest on the part of a female above the age of sixteen years within the meaning of sect. 2 of the Punishment of Incest Act, 1908, there must be something more than mere submission on the part of the woman to the act of the man ; there must be permission.

R. v. DIMES, 75 J. P. N. 556—C. C. A.

(b) Abortion.

[No paragraphs in this vol. of the Digest.]

(c) Assault.

See also I. (f), *supra*.

53. Process Server Putting Document Inside Coat of Person Served—Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 42.]—The respondent, who was the defendant in a county court action, was met in the street by the appellant, who, acting on behalf of the solicitor to the plaintiff in the action, tendered to the respondent an order for discovery which had been made in the action. The respondent declined to accept the document, whereupon the appellant thrust it into the inner fold of the respondent's coat, which was unbuttoned at the time, and as the respondent opened his coat the document fell on to the street, where he left it. On an information preferred by the respondent against the appellant for assault in so touching him, the justices were of opinion that the order of the county court would have been effectually served by the appellant drawing the respondent's attention to the document and by dropping it on to the street in his presence upon his declining to accept it, and that the appellant was not justified in laying hands upon him. They accordingly convicted the appellant.

HELD—that the appellant was entitled to serve the document on the respondent personally, and that as there was no evidence that the appellant touched the respondent more than was necessary to bring the document home to him, the justices were wrong in convicting the appellant.

ROSE v. KEMPTHORNE, 103 L. T. 730 ; 75 [J. P. 71 ; 27 T. L. R. 132 ; 55 Sol. Jo. 126 ; 22 Cox, C. C. 356—Div. Ct.

54. Indictment for Riot—Conviction for Assault.]—The appellant was convicted of common assault upon an indictment charging him with riot. It appeared, however, that the indictment contained words apt to charge him with assault.

II. Specific Offences—Continued.

HELD, that the appellant could be convicted upon this indictment of a common assault.

R. v. O'BRIEN, 104 L. T. 113; 75 J. P. 192; 27 [T. L. R. 204; 55 Sol. Jo. 219; 21 Cox, C. C. 374—C. C. A.

See S. C. under I. (c), *supra*.

(d) Bigamy.

55. Evidence—Entry in Marriage Register—Identification of Prisoner with Person Named in Register of Same Name.—On a trial of the appellant for bigamy, the Crown proved from the register of marriages that a person of the same name as the appellant married R. on October 15th, 1882. The Crown also proved that the prisoner had cohabited with R. subsequently as his wife, and that the appellant acknowledged R. as his wife and alluded to her as his wife.

HELD—that there was some evidence that the prisoner was the person of the same name who had married R. on October 15th, 1882.

R. v. BIRTLES, 75 J. P. 288; 27 T. L. R. 402—[C. C. A.

(e) Breach of the Peace.

[No paragraphs in this vol. of the Digest.]

(f) Concealment of Birth.

[No paragraphs in this vol. of the Digest.]

(g) Conspiracy.

56. Conspiracy to Defraud Creditors—Summing up—Misdirection.—A man, his wife, and two sons were indicted for conspiring to cheat and defraud the creditors of the wife. It appeared that the wife carried on a business of buying the parts of bicycles, putting them together and selling the bicycles. She became a bankrupt in 1910. The husband managed the business; the sons were employed in the business at a weekly salary. The case for the prosecution was that the creditors had been defrauded by the mother selling to the sons in the years 1908, 1909 and 1910, bicycles under value, the sons reselling the bicycles at a profit. It appeared from the evidence that the mother sold bicycles to the sons at a less sum than she sold them to agents for the retail trade. The appellants were convicted, but the father and the two sons appealed.

HELD—that their convictions should be quashed on the ground that the language of the summing up to the jury was such that the jury might have thought that the fact that the sons were allowed to buy the bicycles at less than other customers was sufficient to justify the conviction, even although the bicycles were sold to them at or over cost price, and it was held that to justify the convictions the jury would have to come to the conclusion that the bicycles were sold below cost price.

R. v. CRANE AND OTHERS, 75 J. P. 415—[C. C. A.

57. Agreement to Indemnify Bail—Public Mischief.—An agreement between an accused person and his bail by which the latter is to be

indemnified against the consequence of the non-appearance of the former is unlawful in that it tends to produce a public mischief; and the parties to such an agreement are guilty of conspiracy notwithstanding that it may not be shown that they entered into the agreement with any intent to defeat the ends of justice.

Opinion expressed by Martin, B., in R. v. Broome ((1851) 18 L. T. (o. s.) 19) disapproved.

R. v. PORTER, [1910] 1 K. B. 369; 79 L. J. [K. B. 241; 102 L. T. 255; 74 J. P. 159; 26 T. L. R. 200; 22 Cox, C. C. 295—C. C. A.

58. Servant's False Character—Character not Given in Writing—Servants' Characters Act, 1792 (32 Geo. 3, c. 56), ss. 2, 3—Common Law Misdemeanour—Sentence of Hard Labour—Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29.—Sect. 2 of the Servants' Characters Act, 1792, which relates to the giving of false characters, applies to characters given, or false pretences made by word of mouth or by conduct as well as in writing.

A conspiracy to commit an offence under this section is a common law misdemeanour and not a conspiracy to cheat or defraud within the meaning of sect. 29 of the Criminal Procedure Act, 1851, and therefore there is no power to impose a sentence of hard labour.

R. v. COSTELLO AND BISHOP, [1910] 1 K. B. [28; 79 L. J. K. B. 90; 101 L. T. 784; 54 Sol. Jo. 13; 22 Cox, C. C. 215; *sub nom.* R. v. CONOLLY AND COSTELLO, 74 J. P. 15; 26 T. L. R. 31—C. C. A.

(h) Cruelty to Children.

59. Child Stealing—Intent to Deprive Parent of Possession of Child—Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56.—The prisoner by force led away two children under the age of fourteen years, and kept them in his company walking the streets of London from 4.30 p.m. until 1.30 a.m. The jury found that he intended to take the children back to their parents the next day.

By sect. 56 of the Offences Against the Person Act, 1861, "Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away, or detain, any child under the age of fourteen years, with intent to deprive any parent . . . of the possession of such child . . . shall be guilty of felony . . ."

HELD—that in order to come within the provisions of this section, there must be an intention to deprive the parent permanently of the possession of the child.

R. v. JONES (No. 2), 75 J. P. 272; 22 Cox, C. C. [212—Cent. Crim. Ct.

(i) Disorderly Houses.

[No paragraphs in this vol. of the Digest.]

(j) Embezzlement.

[No paragraphs in this vol. of the Digest.]

II. Specific Offences—Continued.

(k) Falsification of Accounts.

60. Falsifying Taximeter—Driver, of Taxi-cab—“Serrant”—*Falsification of Accounts Act, 1875* (38 & 39 Vict. c. 24), s. 1.]—The falsification of a mechanical means of recording an account, e.g., a taximeter, is the falsification of an account within sect. 1 of the *Falsification of Accounts Act, 1875*.

HELD, ALSO—that the driver of a taxi-cab belonging to a company was a servant of the company within sect. 1 of the *Falsification of Accounts Act, 1875*.

R. v. SOLOMONS, [1909] 2 K. B. 980; 79 [L. J. K. B. 8; 101 L. T. 496; 73 J. P. 467; 25 T. L. R. 747; 22 Cox, C. C. 178—C. C. A.]

(l) Forgery.

61. Receiving Money under, upon, or by virtue of a Forged Instrument—Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 38.]—*Quære*, whether the words in sect. 38 of the *Forgery Act, 1861*, “... receive or obtain ... any money ... under, upon, or by virtue of any forged or altered instrument, knowing the same to be forged or altered ...” apply where the person receiving the proceeds of a forgery was not a party to the forgery or uttering, and only knew of the fact of the forgery after it had been committed.

R. v. HUTCHINSON, 75 J. P. N. C. 508—C. C. A.

62. Acceptance of Bill of Exchange in Name of Another Person without Lawful Authority—Partnership Name—Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 24.]—A person may be convicted under sect. 24 of the *Forgery Act, 1861*, of accepting a bill of exchange in the name of another person without lawful authority or excuse, although he accepts it in the firm name of a partnership of which he is a member.

R. v. HOLDEN, *Times*, December 21st, 1911 [—C. C. A.]

(m) Housebreaking, Burglary, etc.

[No paragraphs in this vol. of the Digest.]

(n) Larceny, False Pretences, and Receiving Stolen Goods.

See also No. 16, *supra*; MISREPRESENTATION, No. 1.

63. Larceny—Fictures—Possession Obtained Under Agreement Made with Intent to Steal Fictures—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 31.]—The appellant was found guilty on an indictment under sect. 31 of the *Larceny Act, 1861*, for having stolen certain lead and zinc piping fixed to certain houses, the property of K. K., and the appellant had agreed that the latter should put the houses into repair within three months, and that when the repairs were completed K. should grant a lease of the houses for twenty-one years to the appellant, who in the meanwhile was to be deemed a tenant-at-will. According to the prosecution the agreement had been entered into and possession of

the houses obtained by the appellant with the fraudulent intention of stealing the piping.

HELD—that the conviction must be affirmed.

R. v. Munday (1799) 2 Leach, C. C. 850) followed.

R. v. RICHARDS, [1911] 1 K. B. 260; 80 L. J. [K. B. 174; 75 J. P. 144; 22 Cox, C. C. 372—C. C. A.]

64. Larceny—Sentence—Amount Stolen—Previous Convictions.]—While the offence of larceny for which a prisoner is indicted may be a very bad one notwithstanding that the sum stolen is small, as, for instance, where the prisoner has obtained small amounts from a number of different persons, nevertheless, in dealing with one particular case of larceny, the small amount stolen may properly be taken into consideration on the question of sentence.

R. v. MYLAND, 27 T. L. R. 256—C. C. A.

65. Larceny—Taxi-cab Driver not Paying over Percentage of Takings—Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1.]—Conviction of the appellant, a taxi-cab driver, for misappropriating £6 3s. 6d. “had and received for and on account of” the taxi-cab owner, by failing to pay over 75 per cent. of his takings, according to the arrangement under which he took out the cab, affirmed.

R. v. MESSER, 28 T. L. R. 69—C. C. A.

66. Larceny by Trick—False Pretences—Passing of Property.]—The appellant took two bicycles to an auctioneer and put them in for sale by auction at a reserve price of £2 3s. By a fraudulent arrangement between the appellant and one S., the latter was to bid the reserve price at the auction. S. did so bid, and the bicycles were knocked down to him, but he did not pay the price to the auctioneer. The appellant, taking advantage of the auctioneer's practice to pay over the money for which an article was sold at the auction before he received the money from the bidder, went to the auctioneer and obtained payment of the £2 3s. The appellant was indicted for and convicted of larceny of the £2 3s.

HELD—that the conviction must be quashed, inasmuch as the auctioneer having intended to part not only with the possession of, but with the property in, the £2 3s., the offence was not larceny.

Semble, the offence committed was obtaining the money by false pretences.

R. v. FISHER (No. 2), 103 L. T. 320; 74 J. P. [427; 26 T. L. R. 589; 22 Cox, C. C. 340—C. C. A.]

67. Larceny from the Person—Simple Larceny—Asportation.]—The prisoner put his hand into the prosecutor's pocket, got hold of his purse, and pulled it up to the edge of the pocket when the corner caught on a belt worn by the prosecutor. The prosecutor at that moment grasped the purse and put it back.

II. Specific Offences—Continued.

HELD—that the prisoner was guilty of simple larceny and not of larceny from the person.

R. v. TAYLOR, [1911] 1 K. B. 674; 80 L. J. [K. B. 311; 75 J. P. 126; 27 T. L. R. 108—C. C. A.]

68. *False Pretences—Evidence—Questions Suggesting Other Frauds—Admissibility—Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), s. 1 (f).]

—E. was charged with obtaining money from D. by false pretences in respect of various articles of china sold by him to D. It was alleged by the prosecution that all the articles referred to in the indictment were sold by E. to D. under an agreement that he was to charge D. the cost price plus 10 percent. profit or commission; and the false pretence alleged was that E. represented to D. that the cost was much in excess of the real cost. Questions were put to E. in cross-examination as to other transactions, suggesting that he had obtained money from D. by alleging that certain china figures were genuine pieces of old Dresden china, whereas he must have known that they were not.

HELD—that the questions were improperly allowed, inasmuch as they tended to show that the appellant had committed an offence other than that with which he was charged.

R. v. Fisher (No. 1) (No. 16, *supra*) followed.

R. v. ELLIS, [1910] 2 K. B. 746; 79 L. J. K. B. [841; 102 L. T. 922; 74 J. P. 388; 26 T. L. R. 535; 22 Cox, C. C. 330—C. C. A.]

69. *False Pretences—Fraudulent Conversion—Meaning of Safe Custody—Money Entrusted as Security for Honesty during Employment—Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 88—*Larceny Act, 1901* (1 Edw. 7, c. 10), s. 1 (a).]

—The defendant by means of false pretences induced the prosecutor to deposit the sum of twenty pounds as security for his honesty while employed by the defendant, the deposit to be returnable at the termination of the employment. When the prosecutor left the service of the defendant the deposit was not returned to him.

By sect. 1 (a) of the Larceny Act, 1901, "Whosoever, being entrusted, either solely or jointly with any other person, with any property, in order that he may retain in safe custody . . . the property or any part thereof or any proceeds thereof . . . fraudulently converts to his own use or benefit . . . the property or any part thereof or any proceeds thereof, shall be guilty of a misdemeanor . . ."

HELD—that the defendant had not brought himself within the provisions of the Larceny Act, 1901.

R. v. Hotine ((1904) 68 J. P. 143) followed.

By sect. 88 of the Larceny Act, 1861, "Whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of a misdemeanor . . ."

HELD—that, although the defendant might

have obtained credit, he had none—the less obtained money.

R. v. O'BRIEN, 75 J. P. 392—Cent. Crim. Ct.

70. *Receiving Stolen Goods—No Guilty Knowledge at Time of Receipt—Subsequent Knowledge.*]—The appellant was charged with having on April 24th, 1911, received a horse knowing it to have been stolen. It appeared that at the time he received it he did not know that it had been stolen, but that subsequently, on being told the fact, he refused to give it up unless he was repaid the amount he had paid to the person from whom he got it. The appellant was convicted.

HELD—that the conviction must be quashed.

R. v. JOHNSON, 75 J. P. 464; 27 T. L. R. [489—C. C. A.]

71. *Receiving Stolen Goods—Indictment—Misdemeanour at Common Law—Facts Proved Amounting to Felony—Criminal Procedure Act, 1881* (14 & 15 Vict. c. 100), ss. 12, 24—*Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 91.].—The appellants were indicted for that they "unlawfully did receive and have" certain goods "well knowing the same goods and chattels to have been feloniously stolen, taken, and carried away against the form of the statute in such case made and provided and against the peace of our said Lord the King, his crown and dignity." The indictment contained no allegation that the receiving was felonious. The original stealing was felonious, as alleged.

HELD—that the words in the indictment "against the form of the statute in such case made and provided" could be rejected as surplusage; that the indictment was a good indictment for a misdemeanour at common law; and that, although the facts given in evidence amounted in law to a felony, the appellants were not entitled to be acquitted as the case came within sect. 12 of the Criminal Procedure Act, 1851.

R. v. GARLAND AND ANOTHER, [1910] 1 K. B. [154; 79 L. J. K. B. 239; 102 L. T. 254; 74 J. P. 135; 26 T. L. R. 130; 22 Cox, C. C. 292—C. C. A.]

72. *Receiving Stolen Goods—Found in Possession of Stolen Goods—Prevention of Crimes Act, 1871* (34 & 35 Vict. c. 112), s. 19.].—To satisfy the words "has been found in his possession" in sect. 19 of the Prevention of Crimes Act, 1871, it is not necessary that the goods should be found in the prisoner's possession at the very moment of his arrest.

R. v. ROWLAND, [1910] 1 K. B. 458; 79 L. J. [K. B. 327; 102 L. T. 112; 74 J. P. 144; 26 T. L. R. 202; 22 Cox, C. C. 273—C. C. A.]

(o) Malicious Damage.

(No paragraphs in this vol. of the Digest.)

(p) Manslaughter.

See No. 19, *supra*.

II. Specific Offences—Continued.

(q) Murder.

See also Nos. 19, 24, *supra*; 91, *infra*.

73. Attempt to Murder—Act Done with Intent to Murder—Sentence—Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9—Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 11—15.]—The completion or attempted completion of one of a series of acts intended by a person to result in the killing of another person is an attempt to murder, even although the completed act would not, unless followed by the other acts, result in killing. There cannot be an act done with intent to murder without its being an attempt to murder.

The group of sections—11 to 15—of the Offences Against the Person Act, 1861, headed "Attempts to murder," is a code embracing all attempts to murder. Therefore, where a person is indicted for murder, and the jury, acting under sect. 9 of the Criminal Procedure Act, 1851, find him guilty of an attempt to murder, he is liable to the punishment provided for attempted murder by the Offences Against the Person Act, 1861.

R. v. Connell ((1853), 6 Cox, C. C. 178) distinguished. *Observations of Kennedy, J., in R. v. Linneke* ([1906] 2 K. B. 99) questioned.

R. v. WHITE, [1910] 2 K. B. 124; 79 L. J. K. B. [854; 102 L. T. 784; 74 J. P. 318; 26 T. L. R. 466; 54 Sol. Jo. 523; 22 Cox, C. C. 325—C. C. A.

74. Evidence—Expert Giving Evidence as to Whether Wound Self-inflicted or Not—Expert Not Having Seen Body of Deceased—Admissibility.]—In a trial for murder an expert who has not seen and examined the body of the deceased, but who has heard a description given by a doctor or other witness who has seen the body and the wounds thereon, may be called as a witness and may competently be asked whether in his opinion, assuming the facts described by the witness who has seen the body to be true, the wounds could have been self-inflicted or not.

R. v. MASON, 28 T. L. R. 120—C. C. A.

(r) Obscene Books.

[No paragraphs in this vol. of the Digest.]

(s) Perjury and False Oaths.

75. False Oath—Competency of Justices to Administer Oath—Informal Meeting of Justices for Licensing Business.]—The defendant was indicted for the common law misdemeanour of taking a false oath in connection with the proposed transfer of a licence, before justices, on April 12th, 1910, on which date there was an informal meeting of the justices for the purpose of expediting licensing business when the special sessions, which had been fixed for May 18th, 1910, came on. The defendant was convicted.

HELD—that the conviction must be quashed, inasmuch as at the meeting on April 12th the justices had no authority to administer an oath.

R. v. SHAW, 104 L. T. 112; 75 J. P. 191; 27 [T. L. R. 181; 22 Cox, C. C. 376—C. C. A.

(t) Treason.

[No paragraphs in this vol. of the Digest.]

(u) Vagrancy.

See also POOR LAW, Nos. 1, 9.

76. Appeal Against Sentence—Incorrigible Rogue—Maximum Sentence—When to be Imposed.]—Sembles, the maximum sentence of twelve months' imprisonment with hard labour should not be imposed on a person convicted as an incorrigible rogue for begging, even though previously convicted on many occasions of begging, if the evidence shows that the offender merely begged without any aggravating circumstances, *e.g.*, with menaces.

R. v. Edwards ((1909) 73 J. P. 286) followed.

R. v. COOPER, 75 J. P. 125—C. C. A.

77. Rogue and Vagabond—"Found" upon Premises for Unlawful Purpose—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.]—Sect. 4 of the Vagrancy Act, 1824, provides (*inter alia*) that every person "found in or upon any dwelling house . . . for an unlawful purpose" shall be deemed a rogue and vagabond.

HELD—that to constitute the offence created by those words the accused must be discovered upon the premises doing the acts or things which of themselves constitute the unlawful purpose, but that actual apprehension upon the premises is not necessary.

MORAN v. JONES, 104 L. T. 921; 75 J. P. 411; [27 T. L. R. 421—Div. Ct

(v) Women and Girls, Offences against.

See also No. 4, *supra*; MAGISTRATES No. 21.

78. Procuration—Girl brought from Scotland—Continuing Offence—Trial in England—Jurisdiction—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 2.]—The offence of procuration under sect. 2 of the Criminal Law Amendment Act, 1885, is a continuing offence, and if any part of it takes place within the jurisdiction of the English Courts, those Courts have jurisdiction to try it.

R. v. MACKENZIE, R. v. HIGGINSON, 75 J. P. [159; 27 T. L. R. 152—C. C. A.

79. Procuration—Indictment—"Girl or Woman under Twenty-one Years of Age"—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 2 (1).]—By sect. 2 (1) of the Criminal Law Amendment Act, 1885, "Any person who procures or attempts to procure any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to have unlawful carnal connexion either within or without the Queen's Dominions with any other person or persons" shall be guilty of a misdemeanour. An indictment under this subsection charged the defendant with the procuration of a "girl" without stating her age or stating that she was "under twenty-one years of age."

II. Specific Offences—Continued.

HELD—that the indictment was good, and that the words in the sub-section "under twenty-one years of age" qualify the word "woman" only and not the word "girl."

R. v. JONES (No. 3), 55 Sol. Jo. 754—C. C. A.

III. CONVICTS' PROPERTY.

[No paragraphs in this vol. of the Digest.]

IV. CRIMINAL APPEALS.

(a) Generally.

[No paragraphs in this vol. of the Digest.]

(b) Appeal against Sentence.

See also Nos. 25, 26, 27, 36, 43, 64, 76, *supra*; ALIENS, No. 1.

80. Increase of Sentence by Court—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (3).—A prisoner convicted of felonious shooting with intent to murder and sentenced to twelve years' penal servitude, applied for leave to appeal against the sentence. Leave was granted on the ground that the sentence was inadequate. At the hearing of the appeal the appellant, who was not represented by counsel, was warned that if he persisted in the appeal he would run the risk of an increase of sentence. He, however, proceeded to argue his appeal, which was dismissed. The Court increased the sentence from twelve to fifteen years' penal servitude.

R. v. SIMPSON, 75 J. P. 56—C. C. A.

81. Concurrent Sentences—Hard Labour and Penal Servitude.—The appellant was convicted of forgery and false pretences, and was sentenced to seven years' penal servitude and twelve months' hard labour, the two sentences to run concurrently.

HELD—that the sentence of twelve months' hard labour should be reduced to a nominal sentence of one day, as it was doubtful whether it was present to the mind of the judge that the effect of the sentences imposed would be that the appellant would have to spend a longer period in hard labour at the commencement of his sentence than would otherwise be the case, and would not be able to earn as many remission marks.

R. v. BRUCE, 75 J. P. 111; 27 T. L. R. 51—
[C. C. A.]

82. Young Person—Accused under Sixteen Years of Age—Sentence of Four Months' Imprisonment—Children Act, 1908 (8 Edw. 7, c. 67), ss. 102 (3), 106.]—Sentence of four months' imprisonment imposed upon the appellant, a lad over fourteen and under sixteen years of age, quashed on the ground that under sect. 102, sub-sect 3, of the Children Act, 1908, he could not be sentenced to imprisonment without a certificate by the Court as to his unruly character, and that, although under sect. 106 he could have been ordered detention not exceeding one month, he had already been in prison for nearly a month.

R. v. BRADFORD, 28 T. L. R. 26—C. C. A.

83. Plea of Guilty—Quashing Sentence—Power of Court to Pass other Sentence—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (3).]

—Where a prisoner has pleaded guilty and appeals against his sentence, the Court, where it quashes such sentence, has power, under sect. 4, sub-sect. 3, of the Criminal Appeal Act, 1907, to substitute another sentence therefor.

R. v. Davidson (*infra*) overruled.

R. v. ETTRIDGE, [1909] 2 K. B. 24; 78 L. J. [K. B. 479; 100 L. T. 624; 73 J. P. 253; 25 T. L. R. 391; 53 Sol. Jo. 401—C. C. A.]

84. Plea of Guilty—Sentence Quashed—No Power to Pass Sentence in Substitution—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (3).—Where the Court of Criminal Appeal quashes a sentence passed upon an appellant who has pleaded guilty to an indictment, the Court has no power under sect. 4 (3) of the Criminal Appeal Act, 1907, to pass another sentence on the appellant in substitution therefor.

The appellant had pleaded guilty and had been sentenced to imprisonment with hard labour for an offence which was not punishable with hard labour.

The Court quashed the sentence on the ground that it was illegal. They passed no other sentence upon the appellant, as sect. 4 (3) of the Criminal Appeal Act, 1907, only gave them power to pass "such other sentence warranted in law by the verdict." There had been no verdict, and therefore the Court had no power to pass another sentence upon the appellant.

R. v. DAVIDSON, [1909] W. N. 52; 100 L. T. [623; 25 T. L. R. 352; 22 Cox, C. C. 99—C. C. A.]

Overruled by *R. v. Ettridge*, *supra*.

85. Ticket-of-Leave—Remanet of Last Sentence—Proper Form of Sentence—Penal Servitude Act, 1864 (27 & 28 Vict. c. 47), s. 9—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), ss. 3, 4 (3), 19 (a).—Judges in passing sentence on a prisoner should not refer to the *remanet* of the prisoner's last sentence by ordering that the new sentence should be served after or concurrently with the *remanet*, as by sect. 9 of the Penal Servitude Act, 1864, the prisoner must serve his *remanet* after serving the fresh sentence that is passed upon him. But where a judge has done so, the Court of Criminal Appeal will vary the sentence to give effect as far as possible to the total length of sentence the judge at the Court of trial wished to impose.

Where the Home Secretary refers a case to the Court of Criminal Appeal under sect. 19 of the Criminal Appeal Act, 1907, with regard to sentence, it is not open to the petitioner to appeal against his conviction; in such a case, the Court has the power to vary the sentence under sect. 4 (3) of the Criminal Appeal Act, 1907.

IV. Criminal Appeals—Continued.

R. v. Hamilton ((1908) 72 J. P. N. C. 365) considered.

R. v. SMITH, R. v. WILSON, [1909] 2 K. B. 756; 79 L. J. K. B. 4; 101 L. T. 126; 73 J. P. 407; 22 Cox, C. C. 151—C. C. A.

(c) Appeal on Facts.

[No paragraphs in this vol. of the Digest.]

(d) Bail.

86. *Conviction Quashed—Proposed Appeal to House of Lords—Custody of Defendant pending Appeal—Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), ss. 1 (6), 4.]—Where the Court of Criminal Appeal quash a conviction and it is proposed by the prosecution to apply to the Attorney-General for a certificate under sect. 1 (6) of the Criminal Appeal Act, 1907, that the decision involves a point of law of exceptional public importance with view to an appeal to the House of Lords, the Court has no power under the Act either to hold the defendant to bail or to keep him in custody pending an appeal.

R. v. BALL, [1911] A. C. 47, 58; 104 L. T. 47; [75 J. P. 180, 182; 55 Sol. Jo. 190; 22 Cox, C. C. 364; *sub nom.* DIRECTOR OF PUBLIC PROSECUTIONS *v. BALL* (No. 1), 80 L. J. K. B. 689—C. C. A.

87. *Notice of Application to Prosecution.*]—While the Court of Criminal Appeal cannot on its own initiative lay down a general rule that notice must be given to the prosecution when an application for bail pending the hearing of an appeal is intended to be made, it is very desirable that a judge or the Court in the exercise of his or its discretion should direct such notice to be given. In cases where the Director of Public Prosecutions is concerned the application for bail should be refused where no notice has been given of the intended application.

R. v. RIDLEY, 100 L. T. 944; 25 T. L. R. [508; 22 Cox, C. C. 127—C. C. A.

(e) Fresh Evidence.

[No paragraphs in this vol. of the Digest.]

(f) Insanity.

88. *Arraignment—Verdict of Unfit to Plead and Take Trial—“Conviction”—Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), s. 3.]—No appeal or application for leave to appeal lies to the Court of Criminal Appeal from the verdict of a jury upon the issue that a prisoner against whom a true bill has been found is on arraignment insane and unfit to plead and take his trial, as there is no conviction on indictment within the meaning of sect. 3 of the Criminal Appeal Act, 1907.

R. v. LARKINS, [1911] W. N. 118; 105 L. T. 384; [75 J. P. 320; 27 T. L. R. 438; 55 Sol. Jo. 501—C. C. A.

89. *Special Verdict—Guilty of the Act, but Insane—“Conviction on Indictment”—Right of Appeal—Trial of Lunatics Act, 1883* (46 & 47 Vict. c. 38), s. 2—*Criminal Appeal Act,*

1907 (7 Edw. 7, c. 23), s. 3.]—A prisoner who has been found by a jury to have been guilty of the act or omission charged against him, but to have been insane so as not to be responsible according to law for his actions at the time when he did the act or made the omission, has, under sect. 2 (1) of the Trial of Lunatics Act, 1883, been convicted on indictment within the meaning of sect. 3 of the Criminal Appeal Act, 1907, and therefore has a right of appeal against that part of the verdict which finds him guilty of the act or omission charged against him. But he has no right of appeal against that part of the verdict which finds him to have been insane, as that is a special verdict of the jury in relief of the prisoner and is not a part of the conviction.

R. v. Ireland ([1910] 1 K. B. 654—No. 90, *infra*) explained and approved.

R. v. MACHARDY, [1911] 2 K. B. 1144; 80 [L. J. K. B. 1215; 105 L. T. 556; 28 T. L. R. 2; 55 Sol. Jo. 754—C. C. A.

90. *Special Verdict—Guilty but Insane—“Conviction”—Trial of Lunatics Act, 1883* (46 & 47 Vict. c. 38), s. 2—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), s. 3.]—The special verdict of “Guilty but insane” returned under the Trial of Lunatics Act, 1883, coupled with the order for the prisoner’s detention as a criminal lunatic till His Majesty’s pleasure shall be known, is a “conviction” of the prisoner within the meaning of that term in sect. 3 of the Criminal Appeal Act, 1907.

R. v. IRELAND, [1910] 1 K. B. 654; 79 L. J. [K. B. 338; 102 L. T. 608; 74 J. P. 206; 26 T. L. R. 267; 54 Sol. Jo. 543; 22 Cox, C. C. 322—C. C. A.

(g) Mistakes of Judges.

See also No. 56, *supra*.

91. *Murder—Misdirection as to Corroboration.*]—Conviction for murder quashed on the ground of misdirection by the judge as to the extent of corroboration of a witness whose character and whose part in the transaction were such that his evidence required corroboration.

R. v. ELLSON, 28 T. L. R. 1—C. C. A.

92. *Defence not put to Jury—Wounding—Defence of Self-defence—Miscarriage of Justice.*]—The appellant was convicted of felonious wounding. At the trial he did not deny the wounding, but said that he acted in self-defence. This defence was not put to the jury, the only question left to them being whether or not the appellant was insane.

Held—that as the appellant’s defence had not been left to the jury, the conviction must be quashed.

R. v. HILL, 28 T. L. R. 15—C. C. A.

93. *Summing Up—Evidence for Defence—Misdirection in Fact.*]—Conviction for manslaughter quashed on the ground that, where the jury had to decide a nice question as to which of two accounts was to be believed, the judge had in substance wrongly directed the jury that the

IV. Criminal Appeals—Continued.

witnesses for the defence had given their evidence for the first time at the trial, and that therefore there had been no opportunity of testing their story, whereas in fact these witnesses had given evidence before the coroner,—the Court being unable to say that the verdict would have been the same had the mistake not occurred.

R. v. SAVIDGE, 131 L. T. Jo. 579; 75 J. P. N. C. [520—C. C. A.

(h) Practice.

94. Appeal to House of Lords—Practice—Typewritten Documents—List of Documents—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (6).]—Where the Director of Public Prosecutions brought an appeal under sect. 1 (6) of the Criminal Appeal Act, 1907, against a decision of the Court of Criminal Appeal quashing a conviction for incest, it was decided that the papers in the case need not be printed.

List of documents in the case which were deemed sufficient.

R. v. BALL, [1911] A. C. 47, 61; 75 J. P. 180, [183; *sub nom.* DIRECTOR OF PUBLIC PROSECUTIONS v. BALL (No. 2), 80 L. J. K. B. 691—H. L.

95. Appeal to House of Lords—Order Quashing Conviction Reversed—Re-arrest of Convicted Person—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (6).]—Where an order made by the Court of Criminal Appeal quashing a conviction is reversed by the House of Lords on an appeal by the Director of Public Prosecutions under sect. 1 (6) of the Criminal Appeal Act, 1907, the proper course for the prosecution is to apply to the Court of Criminal Appeal, which is a Court of record, to have effect given to the order of the House of Lords. The Court has power to order the arrest of the person convicted in order that he may undergo the sentence passed upon him.

R. v. BALL, [1911] A. C. 47, 72; 104 L. T. [48; 75 J. P. 180, 184; 27 T. L. R. 162; 55 Sol. Jo. 190; 22 Cox, C. C. 370; *sub nom.* DIRECTOR OF PUBLIC PROSECUTIONS v. BALL (No. 2), 80 L. J. K. B. 691, 693—C. C. A.

96. Discharge of Jury—Power to Review Judge's Decision—Second Trial before Fresh Jury.]—The Court of Criminal Appeal has no power to review the decision of the judge at the trial of a prisoner as to whether a necessity has arisen for discharging the jury without giving a verdict, and for adjourning the case to be tried before a fresh jury. A jury should not be discharged merely in order to enable the prosecution to make out a stronger case against the prisoner.

R. v. LEWIS, [1909] W. N. 128; 78 L. J. [K. B. 722; 100 L. T. 976; 73 J. P. 346; 25 T. L. R. 582; 22 Cox, C. C. 141—C. C. A.

CROSSED CHEQUES.

See BANKERS.

CROWN.

See CROWN PRACTICE; DEPENDENCIES AND COLONIES; ROYAL FORCES.

CROWN DEBT.

See BANKRUPTCY; DEPENDENCIES AND COLONIES.

CROWN PRACTICE.

COL.

I. CIVIL PROCEEDINGS AGAINST CROWN AND CROWN SERVANTS	144
II. CROWN RIGHTS	146
III. CERTIORARI	146
IV. HABEAS CORPUS	146
V. MANDAMUS	146

See also CRIMINAL LAW, No. 22.

I. CIVIL PROCEEDINGS AGAINST CROWN AND CROWN SERVANTS.

1. Action Claiming Declaration—Form IV.—Competency—R. S. C., Ord. 25, rr. 4, 5—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8).]—The Court has jurisdiction to entertain an action against the Attorney-General, as representing the Crown, claiming a declaration of right. The Court is not, however, bound to make a mere declaratory judgment, and in the exercise of its discretion will have regard to all the circumstances of the case.

Hodge v. Attorney-General ((1839) 3 Y. & C. Ex. 342) approved and followed.

Ord. 25, r. 4, of the R. S. C. ought not to be applied to an action involving serious investigations of ancient law and questions of general importance.

DYSON v. ATTORNEY-GENERAL, [1911] 1 K. B. [410; 80 L. J. K. B. 531; 103 L. T. 707; 27 T. L. R. 143; 55 Sol. Jo. 168—C. A.

[See also S. C. in C. A. later, heard on appeal with No. 2, *infra*.]

2. Land Valuation—Particulars of Persons Paying and Receiving Rent of Lands—Declaration Against Crown—Form VIII.—R. S. C., Ords. 25, r. 5, 68, r. 1—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 26, 31.]—The expression "any land" in sect. 31 of the Finance (1909-10) Act, 1910, has the same meaning as the expression "land" and "the land" in sect. 26 of the same Act—viz., a particular piece of land as to which the special information there mentioned is required.

CROPS.

See AGRICULTURE; LANDLORD AND TENANT.

I. Civil Proceedings against Crown and Crown Servants—Continued.

On August 9th, 1910, the Commissioners of Inland Revenue served on the plaintiff under the Finance (1909-10) Act, 1910, a notice, dated August 4th, 1910, with form indorsed, commonly known as Form 8, requiring him to furnish within thirty days, under a penalty of £50 for non-compliance, "(1) the name and address of every person to whom you pay rent in respect of any land situate within or partly within the parish or place of P., and (2) the name and address of every person on behalf of whom you, as agent, receive any rent in respect of any land situate within, or partly within, the aforesaid parish or place." The return was to be forwarded to a person described as "land valuation officer." In an action by the plaintiff against the Attorney-General, as representing the Crown, claiming a declaration that the form was illegal, unauthorised and *ultra vires* :—

HELD—that the form was unauthorised, on the grounds (1) that under the Act the powers of the Commissioners of Inland Revenue were confined to requiring the information in question in reference to particular land specified by them, and (2) that they had no right to require this information to be sent to any one but themselves.

HELD, ALSO—that the Court had jurisdiction under Ord. 25, r. 5, to make a binding declaration of right against the Attorney-General as representing the Crown, but that the jurisdiction was discretionary and ought to be exercised with great care and with a due regard to all the circumstances of the case.

HELD, FURTHER, upon the facts—that the case was one in which the discretion should be exercised in favour of the plaintiff by declaring that the form was unauthorised and that he was not under any obligation to comply with the requisitions therein contained or any of them.

Dyson v. Attorney-General (supra) followed.

Grand Junction Waterworks Co. v. Hampton Urban Council ([1898] 2 Ch. 331) distinguished.

By Ord. 68, r. 1, "Subject to the provisions of this Order, nothing in these rules, save as expressly provided, shall affect the procedure on practice in any of the following causes or matters: . . . (c) Proceedings on the Revenue side of the King's Bench Division . . .":—

HELD—that the Order referred only to the procedure and practice in the several causes and matters therein mentioned, and that the present cause or matter was not one of those to which the Order referred, but was governed by the ordinary rules of procedure and practice of which Ord. 25, r. 5, was one.

BURGHES v. ATTORNEY-GENERAL, [1911] 2 Ch. [139; 80 L. J. Ch. 506; 105 L. T. 193; 27 T. L. R. 433; 55 Sol. Jo. 520—Warrington, J.

AFFIRMED ON APPEAL—on the ground that as the plaintiff was entitled under sect. 26 of the

Finance (1909-10) Act, 1910, to not less than thirty days within which to comply with the notice, the notice was invalid.

BUT HELD—that it is no objection to the validity of such a notice that it requires the particulars to be sent to the appointed officer of the Commissioners of Inland Revenue.

HELD, ALSO—that a form which requires, *inter alia*, a person who is the owner and occupier of land to state the annual value of such land is not warranted by sect. 26 of the Act, and that the insertion of that requirement in the form served upon such person invalidates the whole form.

DYSON v. ATTORNEY-GENERAL, *BURGHES v. [ATTORNEY-GENERAL]*, [1911] W. N. 231; 28 T. L. R. 72—C. A.

II. CROWN RIGHTS.

See REVENUE, No. 12; ROYAL FORCES, No. 1; SHIPPING, No. 66.

III. CERTIORARI.

See EDUCATION, No. 1.

IV. HABEAS CORPUS.

See EXTRADITION AND FUGITIVE OFFENDERS.

V. MANDAMUS.

See also EDUCATION, No. 1; INCOME TAX, No. 7; LOCAL GOVERNMENT. Nos. 14, 18.

3. *Sufficiency of Interest of Prosecutor—Opposition to Bill before Parliament—Insertion of Clause Proposed.*—Where petitioners appear in opposition to a Bill before Parliament, and, with the object of protecting their own interests, procure the insertion in the Bill of a clause imposing a particular duty upon the promoters or other persons, they will have a sufficient interest in the performance of that duty to support an application by them for a mandamus to enforce it, notwithstanding that they are not named in the clause, and that the duty is one imposed for the benefit of the public at large.

So HELD by Lord Alverstone, C.J., and Pickford, J. (Avory, J., doubting).

R. v. MANCHESTER CORPORATION, [1911] 1 [K. B. 560; 80 L. J. K. B. 263; 104 L. T. 54; 75 J. P. 73; 9 L. G. R. 129—Div. Ct.

See S. C. TRAMWAYS, No. 1.

4. *Alternative Remedy—Employment Agency—Whether Mandamus Lies to London County Council to hear Application for Licence—London County Council (General Powers) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. cxxix.), s. 22.*—*Quære*, whether a mandamus will lie to the London County Council to hear and determine an application for a licence to carry on an employment agency.

As sect. 22, sub-sect. 5, of the London County Council (General Powers) Act, 1910, provides a remedy by appeal in the case of a person aggrieved by the refusal of the London County

V. Mandamus Continued.

Council to grant a licence for an employment agency, the Court discharged a rule which had been obtained for a mandamus requiring the Council to hear an application for an employment agency licence.

R. v. LONDON COUNTY COUNCIL, *EX PARTE* [THORNTON, 27 T. L. R. 422—Div. Ct.]

5. *Motion on Last Day of Term.*—The Court will not hear a motion for a mandamus on the last day of term.

EX PARTE McBEAN, 27 T. L. R. 401—Div. Ct.

6. *Civil Proceedings on Crown Side—Variation Between Writ and Order—Amendment.*—Where the command in a writ of mandamus varies from that contained in the order allowing the issue of such writ, it is a matter of course to quash the writ so varying.

There is no jurisdiction to amend a writ of mandamus that varies as aforesaid, unless the order giving leave to issue it is similarly amended either prior to or contemporaneously with the amendment of the writ.

Where a mandamus commands several things, the prosecutor must show that he is entitled to enforce every one of such commands; and, if he fails to establish a right to enforce any one of such commands, a peremptory mandamus cannot go.

R. (JACKSON) v. CORK COUNTY COUNCIL, [1911] 2 I. R. 206; 44 I. L. T. 79—Div. Ct., Ireland.

CRUELTY TO ANIMALS.

See ANIMALS.

CRUELTY TO CHILDREN.

See CRIMINAL LAW AND PROCEDURE.

CUSTOM OF THE COUNTRY.

See AGRICULTURE.

CUSTOMS AND USAGES.

See AGENCY; BANKERS; BILLS OF EXCHANGE; EVIDENCE; MASTER AND SERVANT, No. 130; SALE OF GOODS, No. 4; STOCK EXCHANGE; TRADE.

CUSTOMS DUTIES.

See REVENUE.

CY PRÈS DOCTRINE.

See CHARITIES; WILLS.

DAIRIES AND COWSHEDS.

See PUBLIC HEALTH.

DAMAGES.

COL.

I. CLASSIFICATION OF DAMAGES.

(a) General or Nominal . . . 148
[No paragraphs in this vol. of the Digest.]

(b) Penalty or Liquidated . . . 148
[No paragraphs in this vol. of the Digest.]

(c) Consequential . . . 148
[No paragraphs in this vol. of the Digest.]

II. MEASURE OF DAMAGES . . . 148**III. WHEN DAMAGES CANNOT BE RECOVERED . . . 150****IV. ASSESSMENT . . . 151**

See also DEPENDENCIES, No. 6; LOCAL GOVERNMENT, No. 8; MISREPRESENTATION, No. 2; NEGLIGENCE, No. 7; WATERS, No. 5.

I. CLASSIFICATION OF DAMAGES.

(a) General or Nominal.

[No paragraphs in this vol. of the Digest.]

(b) Penalty or Liquidated.

[No paragraphs in this vol. of the Digest.]

(c) Consequential.

[No paragraphs in this vol. of the Digest.]

II. MEASURE OF DAMAGES.

See also PATENTS, No. 5.

1. *Breach of Contract—Sale of Goods Act done in Mitigation of Damages—Profit Accruing therefrom—Relevancy.*—The W. Company, having contracted to supply certain electric machines to a railway company, delivered machines which failed to satisfy the conditions of the contract as to economy of working. The railway company accepted the machines, reserving their right to damages for the breach of contract, and subsequently, in order to avoid the expense of the continued use of the machines, bought machines of another manufacturer, P., with which they replaced those of the W. Company. If the railway company had continued to use the W. machines, the loss which they would have suffered in consequence of the breach of contract—namely, the amount by which the cost of working the machines supplied during a period of years representing the normal life of a W. machine would have exceeded the

II. Measure of Damages—Continued.

cost of working W. machines constructed in accordance with the contract for the same period—would have represented a larger sum than the price paid for the substituted P. machines:—

HELD—that, as the substitution of the P. machines went in mitigation of the damages consequent on the breach of contract, the railway company were entitled to recover from the W. Company the price paid for the P. machines; and none the less because the P. machines were so superior to those of the W. Company that it would have been to the pecuniary advantage of the railway company to have effected the substitution at their own cost even if the machines supplied had been in accordance with the contract.

BRITISH WESTINGHOUSE ELECTRIC AND MANUFACTURING CO. v. UNDERGROUND ELECTRIC RY. CO. OF LONDON, [1911] 1 K. B. 575; 80 L. J. K. B. 370; 104 L. T. 105—Div. Ct.

AFFIRMED ON APPEAL (Buckley, L.J., dissenting), [1911] W. N. 252—C. A.

2. *Breach of Contract—Canada—Conveyance of Gas Wells—Reservation of Sufficient Gas to Work Plant—Breach—Substituted Gas Obtained Free of Cost—Nominal Damages.*—The plaintiffs, who carried on the business of burning lime, were possessed of certain gas wells, from which they obtained a supply of natural gas for use in their kilns. They sold these gas wells to the defendants, reserving "gas enough to supply the plant now operated or to be operated by them." The defendants wrongfully refused to permit the plaintiffs to take or be supplied with gas from the wells, so that the plaintiffs were compelled to sink other wells, at a considerable cost, to obtain a supply of gas for their kilns. They brought an action against the defendants to recover the damages caused to them by deprivation of the supply of gas. While the action was pending they sold their works, including the gas wells so sunk by them, and the price paid for the gas wells was considerably in excess of the cost of sinking them.

HELD—that they could only recover nominal damages from the defendants.

Le Blanche v. London and North-Western Ry. Co. ((1876) 1 C. P. D. 286) approved.

ERIE COUNTY NATURAL GAS AND FUEL CO. v. [CARROLL, [1911] A. C. 105; 80 L. J. P. C. 59; 103 L. T. 678—P. C.

3. *Action for Recovery of Land—Interest—Western Australia.*—The appellant, who alleged that he was entitled to certain land in fee simple under the trusts of a settlement, brought an action against the respondent for wrongfully issuing a certificate of title to the land to another person. In this action he established his title to the land, and it was held that the measure of damages was the value of the land with the buildings thereon at the date when his title fell into possession on the death of the previous tenant for life.

HELD—that the appellant was not entitled to interest on the value of the land and buildings from the date when his title fell into possession.

Decision of Supreme Court of Western Australia affirmed.

SPENCER v. REGISTRAR OF TITLES, 103 L. T. [647—P. C.

4. *Breach of Contract—Late Delivery of Goods Sold—Purchaser Entitled Only to Indemnity Against Loss—Quebec.*—The general intention of the law in giving damages for breach of contract is that the plaintiff should be placed in the same position as he would have been in if the contract had been performed. In the case of late delivery the measure thereof in order to indemnify the purchaser is the difference between the market price at the respective dates of due and actual delivery of the goods purchased; but if the purchaser has resold them at a price in excess of that prevailing at the date of delivery he must in estimating his damages give credit therefor.

In an action for damages for breach of contract dated March 13th, 1900, to deliver 3,000 tons of moist wood pulp between September 1st and November 1st of that year the appellant claimed to recover 27s. 6d. a ton, the difference between 70s., the market price at the port of delivery on the due date, and 42s. 6d., the market price at the same place on the date of actual delivery; but it appeared that he had sold the goods at 65s. a ton, involving a loss to him of only 5s. a ton.

HELD—that he was entitled to recover only 5s. a ton. As the Court below had on the evidence decreed that amount on 2,000 tons only, their Lordships increased the amount by £250 in respect of the remaining 1,000 tons, together with a further amount as subsequently agreed between the parties.

WERTHEIM v. CHICOUTIMI PULP CO., [1911] A. C. 301; 80 L. J. P. C. 91; 104 L. T. 226; 16 Com. Cas. 297; 48 Sc. L. R. 1090—P. C.

III. WHEN DAMAGES CANNOT BE RECOVERED.

5. *Remoteness—Towage Contract—Sinking of Tow by Collision—Right of Tug Owner to Recover from Colliding Vessel for Loss of Towage Remuneration.*—The plaintiffs' tug was engaged in towing a ship from Antwerp to Port Talbot, under a contract which contained the clause "Sea towage interrupted by accident to be paid pro rata of distance towed." During the towage, the defendant's vessel, by the negligence of those on board, collided with and sank the tow. The tug was uninjured. The plaintiffs sued the defendant to recover the amount of towage remuneration so lost.

HELD—that the damage sustained by the plaintiffs by reason of the towage contract being no longer performable, in consequence of the sinking of the tow, gave the plaintiffs no cause of action against the defendant.

Cattle v. Stockton Waterworks Co. ((1875) L. R. 10 Q. B. 453) followed.

LA SOCIÉTÉ ANONYME DE REMORQUAGE À [HÉLICE v. BENNETTS, [1911] 1 K. B. 243; 80 L. J. K. B. 228; 27 T. L. R. 77; 16 Com. Cas. 24—Hamilton, J.

IV. ASSESSMENT.

See PRACTICE, No. 22.

6. *Remoteness—Chance—Breach of Contract—Whether Damages capable of Assessment.*—Where by contract a man has a right to belong to a limited class of competitors for a prize, a breach of that contract by reason of which he is prevented from continuing a member of the class and is thereby deprived of all chance of obtaining the prize is a breach in respect of which he may be entitled to recover substantial, and not merely nominal, damages.

The existence of a contingency which is dependent on the volition of a third person does not necessarily render the damages for a breach of contract incapable of assessment.

Richardson v. Mellish ((1824) 2 Bing. 229) and *Watson v. Ambergate, &c., Railway* ((1850) 15 Jur. 418) discussed.

Decision of Pickford, J. (27 T. L. R. 244) affirmed.

CHAPLIN v. HICKS, [1911] 2 K. B. 786; 80 [L. J. K. B. 1292; 105 L. T. 285; 27 T. L. R. 458; 55 Sol. Jo. 580—C. A.

7. *Interest—Damages to be Ascertained—Interest on Amount Recovered—From Date of Order or Certificate—Judgments Act, 1838* (1 & 2 Vict. c. 110), ss. 17, 18—*R. S. C., App. F, Form 7A.*—In an action of trespass an order by consent was made whereby it was referred to a special referee to ascertain the amount of the damages, and the defendants agreed to pay the amount certified.

HELD—that the plaintiffs were entitled to interest on the amount certified from the date of the certificate, and not from the date of the order.

ASHOVER FLUOR SPAR MINES, LD. v. JACKSON, [1911] 2 Ch. 355; 80 L. J. Ch. 687; 105 L. T. 334; 27 T. L. R. 530; 55 Sol. Jo. 649—Eve, J.

DANCING.

See THEATRES, ETC.

DEAD FREIGHT.

See SHIPPING AND NAVIGATION.

DEATH DUTIES.

COL.

I. ESTATE DUTY	151
II. LEGACY AND SUCCESSION DUTY	155
III. PROBATE DUTY	155

(No paragraphs in this vol. of the Digest.)

See also DEPENDENCIES, No. 3.

I. ESTATE DUTY.

See also POWERS, No. 4.

1. *General Power of Appointment—Power not Exercised—Will—Direction by Donee to Pay*

Her “Testamentary Expenses”—Payment and Recovery of Duty by Executors of Donee—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 2 (1) (a), 6 (2), 9 (1).—A donee of a general power of appointment by deed or will died without exercising the power. By her will she expressly declared that she did not desire to exercise it; and she directed her executors to pay her testamentary expenses. The executors of the donee paid estate duty on the unappointed fund, as by sect. 6, sub-sect. 2, of the Finance Act, 1894, they were bound to do.

HELD—that the direction to pay testamentary expenses did not debar the executors from recovering the duty on the unappointed fund out of that fund.

In re Clemow, Yeo v. Clemow ([1900] 2 Ch. 182), explained.

PORTE v. WILLIAMS, [1911] 1 Ch. 188; 80 [L. J. Ch. 127; 103 L. T. 798; 55 Sol. Jo. 45—Joyce, J.

2. *Incidence—Donatio Mortis Causâ—Direction in Will to Pay Testamentary Expenses out of Residue—Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 2 (1), 6 (2), 8 (4), 9 (1), 22 (2) (a).—A testator, who died in 1909, having made a valid *donatio mortis causâ*, by his will directed payment of his testamentary expenses out of his residuary estate.

HELD—that the donee of the *donatio mortis causâ* must bear the proper proportion of estate duty attributable to the value of the *donatio*.

Porte v. Williams (*supra*) followed.

IN RE HUDSON, SPENCER v. TURNER, [1911] 1 Ch. 206; 80 L. J. Ch. 129; 103 L. T. 718—Warrington, J.

3. *Incidence—Sum Charged on Property—Marriage Settlement—Sum Secured by Covenant and Charge on Real Estate—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 14 (1).—Trustees of a settlement containing a covenant to pay a sum of money, also thereby charged upon hereditaments of the covenantor, are “persons entitled to a sum charged on” property within the meaning of sect. 14 (1) of the Finance Act, 1894, and as such are bound to pay the proper rateable part of the estate duty in respect of the property comprised in their security, even though the covenantor’s personal estate proves ample to satisfy the covenant and all estate duty. Further, a proviso in the settlement that the trustees are not to be bound in the first instance to resort to the hereditaments charged is not “an express provision to the contrary” within the meaning of the section.

Alexander’s Trustees v. Alexander’s Marriage Contract Trustees ([1910] S. C. 637) followed.

IN RE HARTLAND, BANKS v. HARTLAND, [1911] 1 Ch. 459; 80 L. J. Ch. 305; 104 L. T. 490; 55 Sol. Jo. 312—Eady, J.

4. *Gift inter vivos—Entire Exclusion of Donor—“Benefit to him by Contract or Otherwise”—Donor allowed to Reside in Property granted—Customs and Inland Revenue Act, 1881* (44 & 45 Vict. c. 12), s. 38 (2) (a)—*Customs and*

I. Estate Duty—Continued.

Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 11 (1)—*Finance Act, 1894* (57 & 58 Vict. c. 30), s. 2 (1) (c).—By sect. 11, sub-sect. 1, of the Customs and Inland Revenue Act, 1889, the description of property required to be included in an account and made subject to duty under sect. 38, sub-sect. 2 (a), of the Customs and Inland Revenue Act, 1881, and therefore to estate duty under sect. 2, sub-sect. 1 (c), of the Finance Act, 1894, "shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise."

The owner of a farm and dwelling-house thereon by a deed of gift in 1897 in consideration of natural love and affection conveyed and assigned the farm, with the dwelling-house and other buildings and the live and dead stock and the other chattels thereon, to the defendant, his great-nephew, who resided with him, and who had in the preceding year taken over the management of the farm. The donor had no property other than that included in the deed, except an annuity of £15 chargeable upon certain land belonging to the defendant. After the execution of the deed the donor continued to reside in the house until his death in 1906, and was maintained by the defendant, who retained the annuity, which was sufficient to meet the cost of his maintenance, but there was no agreement or understanding between the donor and the defendant that the former should be permitted to remain in the house or be maintained by the defendant. Upon the death of the donor the Crown claimed estate duty upon the value of the property comprised in the deed upon the ground that *bonâ fide* possession and enjoyment of the property were not assumed by the donor and thenceforward retained "to the entire exclusion of the donor, or of any benefit to him by contract or otherwise."

HELD—that, though the donor was permitted by the donee to and did in fact reside in the house from the date of the deed until his death, there was an entire exclusion of the donor from the possession and enjoyment of the property or of any benefit to him by contract or otherwise, within the meaning of the section, and that therefore estate duty was not payable.

The words "or otherwise" in the sentence "or of any benefit to him by contract or otherwise" must be read as meaning some arrangement *ejusdem generis* with contract, that is to say, an enforceable arrangement.

Lord Advocate v. Stewart ((1906) 8 F. 579) followed.

ATTORNEY-GENERAL *v.* SECOCOMBE, [1911] 2 [K. B. 688; 80 L. J. K. B. 913; 105 L. T. 18—Hamilton, J.]

5. *Voluntary Disposition of Property*—*Bonâ fide Bargain and Conveyance—Finance* (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 59.]—Estate

duty will not be payable under sect. 59 of the Finance (1909–10) Act, 1910, in respect of property which has been the subject of a *bonâ fide* bargain and conveyance, even if the consideration be less than the full value of the property.

IN RE WEIR AND PITT'S CONTRACT, 55 Sol. Jo. [536—Warrington, J.]

6. *Incidence—Settled Fund—Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 8 (4), 14 (1).—C. executed a settlement in favour of himself for life, and upon his death for his widow for life, and upon her death, as to £10,000, part of the fund, as she should by will appoint, and as to the residue, to follow the trusts of the settlor's will. In 1908 C. died, and estate duty became payable in respect of the settled fund. In 1901 the widow died, having exercised her power of appointment.

HELD—that the duty payable in respect of C.'s death must be apportioned between the persons entitled to the £10,000 and those entitled to the residue of the settled fund.

Berry v. Gaukroger ([1903] 2 Ch. 116) followed.

IN RE CHARLESWORTH, TEW *v.* BRIGGS, 56 [Sol. Jo. 108—Joyce, J.]

7. *Goodwill—Partnership between Father and Sons—Death of Father—Sale of Partnership Assets—Exclusion of "Goodwill"—Liability of Goodwill to Duty—Purchase for Full Consideration—Finance Act, 1894* (57 & 58 Vict. c. 30), ss. 1, 2, 3, 7 (5).—A deed of partnership for carrying on the business of lace manufacturers was entered into in 1907 between a father and his two sons. It provided that neither of the sons should without the consent of the other partners be engaged in any other trade or business except upon the account and for the benefit of the partnership; that they should be bound to give so much time and attention to the business as was requisite, but that the father should not be bound to give more time to the business than he should think fit; that if the father should die or cease to be a partner his share should accrue to the other two partners, subject to their paying to his representatives the value of his share "but without any valuation of or allowance for goodwill which goodwill shall accrue" to the sons. The business was an old-established one in the family, and on each change of partnership the goodwill of the business was mentioned, but it did not appear to have been taken into account, and evidence was given that there was really no goodwill. The father died in 1908, and his share in the partnership business was ascertained and paid for according to the agreement, but no valuation or allowance was made therein for goodwill. Estate duty had been paid upon the whole of the sum so paid, but the value of the share of the deceased partner in the goodwill had not been included. The Crown claimed estate duty on the value of the father's share in the goodwill which accrued to the sons on the death of their father.

HELD—that the goodwill was of very small pecuniary value, if any; that the share of the

I. Estate Duty—Continued.

deceased partner therein, in so far as it existed, accrued to the sons under the articles of partnership; but that, within the meaning of sect. 3, sub-sects. 1 and 2, of the Finance Act, 1894, they had given full consideration in money or money's worth in respect of the same, and therefore no estate duty was payable.

It is for the Court, and not for the commissioners, to determine whether there has been, within sect. 3, full or partial consideration paid in money or money's worth, and the value of such consideration.

ATTORNEY-GENERAL *v.* BODEN, 105 L. T. 247—
[Hamilton, J.]

II. LEGACY AND SUCCESSION DUTY.

See also DEPENDENCIES, No. 19.

8. *Incidence of Duty—Directions to Pay Legacies in "This My Will" Free of Duty—Codicils—Legacies given in Trust in Lieu of Direct Legacies in Will—Additional Beneficiaries.*—A direction to pay legacies given by "this my will" free of duty does not apply *primâ facie* to every legacy subsequently given by codicil; and though the direction applies to legacies given in substitution for those in the will, and to the same beneficiaries, yet where the codicil gives legacies in trust, in lieu of direct legacies, and under the trust fresh beneficiaries are added, these trust legacies must bear their own duty.

IN RE TRINDER, SHEPPARD *v.* PRANCE, 56 Sol.
[Jo. 74—Parker, J.]

III. PROBATE DUTY.

[No paragraphs in this vol. of the Digest.]

DEATH, PRESUMPTION OF.

See EVIDENCE.

DEBENTURES.

See COMPANIES.

DEBTORS ACT, 1869.

See BANKRUPTCY AND INSOLVENCY.

DECEASED WIFE'S SISTER, MARRIAGE WITH.

See HUSBAND AND WIFE, Nos. 3, 4.

DECEIT.

See MISREPRESENTATION AND FRAUD.

DECLARATIONS.

See EVIDENCE.

DEED OF ARRANGEMENT.

See BANKRUPTCY AND INSOLVENCY.

DEED OF ASSIGNMENT.

See CHOSSES IN ACTION.

DEEDS AND OTHER INSTRUMENTS.

See also CONTRACT, No. 6; ESTOPPEL, No. 2; FRAUDULENT AND VOIDABLE CONVEYANCES, No. 2; HUSBAND AND WIFE, No. 13; LANDLORD AND TENANT, No. 2; MISREPRESENTATION, Nos. 3, 4; SOLICITORS, No. 18.

1. *Covenant—Repugnancy—Words Negating Personal Liability of Covenantors—Rejection of Repugnant Words—Limitation of Personal Liability.*—The plaintiff, holding an undivided share of certain houses which had been mortgaged to secure £2,000 and interest, conveyed and released the share to the defendants, who held the other undivided share as trustees, subject to the mortgage. By the deed of conveyance the defendants "as such trustees, but not so as to create any personal liability on the part of them or either of them," covenanted with the plaintiff to pay the £2,000 and interest and to keep him indemnified from all claims on account thereof. The mortgagees subsequently sold the houses for less than the sums due to them, and they demanded the deficiency from the plaintiff, who paid it to them after notice to the defendants, and then claimed repayment of it from the defendants.

HELD—that, as the words in the covenant with reference to the personal liability of the covenantors would, if given effect to, destroy and not merely qualify any personal liability under the covenant, they were repugnant to the covenant, and must be rejected, and that therefore the defendants were personally liable under the covenant to repay to the plaintiff the moneys he had paid to the mortgagees.

Furnill v. Coombes (1843) 5 Man. & G. 736 followed; *Williams v. Hathaway* (1877) 6 Ch. D. 544 distinguished.

WATLING *v.* LEWIS, [1911] 1 Ch. 414; 80 L. J. [Ch. 242; 104 L. T. 132—Warrington, J.]

2. *Party Joined for Specific Purpose—Inference as to Joinder for other Purposes.*—Where a person joins as a party to a deed for a specific purpose, he cannot from that fact alone be considered as having joined for a totally different

Deeds and other Instruments—Continued.

purpose, *e.g.*, that of disposing by the deed, or thereby recognising the disposal, of property which is thereby purported to be dealt with by other parties to the deed.

IN RE HORSFALL, HUDLESTON *v.* CROFTON,
[1911] 2 Ch. 63; 80 L. J. Ch. 480; 104 L. T.
590—Parker, J.

3. *Delivery of Instrument as Escrow—Assignment of Lease—Delivery to Take Effect on Death of Assignor—Testamentary Document.*—A document purporting to be a deed of conveyance by a person of his own property, which is delivered by him on a condition that it shall only become operative upon his death, is a testamentary document, and therefore cannot take effect as an escrow.

H., who was the assignee of the lease of a dwelling-house, signed and sealed a document purporting to be an assignment of the lease by him to one Mrs. B., but of which the date was not filled in, and delivered the document to his solicitors upon terms set forth in a letter addressed to him by them as follows: "We acknowledge that you have to-day executed the assignment of your lease to Mrs. B. as an escrow, and that we are to retain it on your behalf until you send instructions to complete the deed. In the event of your dying before the deed is completed, we understand that we are to consider the deed as having been completed before your death, and to take what steps are necessary to vest the lease in Mrs. B., should she wish it. In the event of Mrs. B. dying before the assignment is completed, you will of course send us further instructions as to what is to be done with the premises." Mrs. B. signed and sealed the document at or about the time when H. did so, but the Court inferred from the circumstances that she did so merely by way of acquiescence in the arrangement, whatever it was, intended by H. The document was not attested so as to satisfy the requirements of the Wills Act. H. died without having given any further instructions in the matter. He occupied, and retained the title deeds of, the house, and paid the rent, rates, and taxes in respect thereof until his death, and had, subsequently to the time when the before-mentioned document was delivered to his solicitors as aforesaid, been party to a deed, reciting that the term was vested in him, by which the lessors granted him permission to make a structural alteration in the house. Mrs. B. survived him:—

HELD—that the proper inference from the facts was that the above-mentioned document was never legally delivered by H., either absolutely as a deed, or as an escrow, and therefore was inoperative.

FOUNDLING HOSPITAL (GOVERNORS AND
GUARDIANS) *v.* CRANE, [1911] 2 K. B. 367;
80 L. J. K. B. 853; 105 L. T. 187—C. A.

DEFAMATION.

See LIBEL AND SLANDER.

DEMURRAGE.

See SHIPPING AND NAVIGATION.

DENTISTS.

See MEDICINE.

DEPENDANTS.

See MASTER AND SERVANT.

DEPENDENCIES,
COLONIES, AND INDIA.

	COL.
I. ADEN	159
[No paragraphs in this vol. of the Digest.]	
II. AUSTRALIA.	
(a) Commonwealth	159
[No paragraphs in this vol. of the Digest.]	
(b) New South Wales	159
(c) Queensland	161
[No paragraphs in this vol. of the Digest.]	
(d) South Australia	161
[No paragraphs in this vol. of the Digest.]	
(e) Victoria	161
(f) Western Australia	161
III. BRITISH SOUTH AFRICA.	
(a) Bechuanaland	162
[No paragraphs in this vol. of the Digest.]	
(b) Cape Colony	162
(c) Natal	162
(d) Transvaal	163
IV. CANADA.	
(a) Dominion generally	163
(b) British Columbia	167
(c) Lower Canada	168
[No paragraphs in this vol. of the Digest.]	
(d) Manitoba	168
[No paragraphs in this vol. of the Digest.]	
(e) Ontario	168
(f) Quebec	168
V. CEYLON	169
VI. CHANNEL ISLANDS	171
[No paragraphs in this vol. of the Digest.]	
VII. GIBRALTAR	171
[No paragraphs in this vol. of the Digest.]	
VIII. HONG KONG	171
[No paragraphs in this vol. of the Digest.]	
VIIIA. ISLE OF MAN	171
IX. JAMAICA	171
[No paragraphs in this vol. of the Digest.]	
IXA. MALTA	171
[No paragraphs in this vol. of the Digest.]	

Dependencies, Colonies, and India—Continued.

	COL.
IXB. MAURITIUS	171
{No paragraphs in this vol. of the Digest.}	
X. NEWFOUNDLAND	171
XI. NEW ZEALAND	171
XII. SHANGHAI	172
{No paragraphs in this vol. of the Digest.}	
XIII. SIERRA LEONE	172
{No paragraphs in this vol. of the Digest.}	
XIIIA. STRAITS SETTLEMENTS	172
XIV. TRINIDAD	172
{No paragraphs in this vol. of the Digest.}	
XV. ZANZIBAR	172
{No paragraphs in this vol. of the Digest.}	
XVI. INDIA	172

See also BANKERS, No. 1; COURTS, Nos. 1, 2; EXTRADITION AND FUGITIVE OFFENDERS; TRUSTS, No. 12.

I. ADEN.

{No paragraphs in this vol. of the Digest.}

II. AUSTRALIA.

See also PATENTS, No. 11.

(a) Commonwealth.

{No paragraphs in this vol. of the Digest.}

(b) New South Wales.

See also PARTNERSHIP, No. 3.

1. *Construction of Statute—Street Improvement—Effect of Assessment on Owners within the Improvement Area—Liability of Owner for Time being—New South Wales Moore Street Improvement Act, 1890, ss. 4, 6.*—The New South Wales Moore Street Improvement Act, 1890, authorised the appellants to make street improvements, the cost thereof, under sects. 4, 6, to be divided between the whole body of rate-payers under a special street improvement rate and the owners of property within the improvement area.

In a suit by the appellants to enforce liability for the unpaid amounts assessed in respect of three properties within the improvement area the judge ordered its dismissal on the ground that with regard to two of the houses they ought to have been separately assessed, and in regard to the third that the defendants were not the successors in title of the person originally assessed.

HELD—that the appellants were not required to assess each house separately, but only the properties of owners, and that, the improvement having been duly commenced and the assessment on owners duly completed according to the requirements of sects. 4 and 6, the owner for the time being was liable for the amount assessed upon his property and for arrears not exceeding three years before suit.

SYDNEY MUNICIPAL COUNCIL *v.* FLEAY, [1911]
[A. C. 371; 81 L. J. P. C. 1—P. C.]

2. *Public Service Superannuation—New South Wales Public Service Superannuation Act, 1903,*

s. 4—Gratuity for Public Service on Retirement—Discretion of Government as to the Amount.]

—Under sect. 4 of the New South Wales Public Service Superannuation Act, 1903, the plaintiff was awarded by the Public Service Board a gratuity of £23 10s. 1d. per mensem, calculated for each year of service from December 9th, 1875, the date of his permanent employment, up to December 23rd, 1895; and upon his claiming to have his service reckoned up to August 16th, 1902, was awarded a further gratuity of one penny in respect of each year subsequent to December 23rd, 1895, up to August 16th, 1902, the date of the commencement of the Public Service Act of that year. In an action to recover payment at the rate of £23 10s. 1d. for each year of the subsequent service:—

HELD—that the award of one penny as above was illusory and tantamount to a refusal by the Board to exercise the discretion entrusted to them by Parliament, and that judgment should be entered for the plaintiff for the amount claimed.

WILLIAMS *v.* GIDDY, [1911] A. C. 381; 80 L. J. P. C. 102; 104 L. T. 513; 27 T. L. R. 443—P. C.

3. *Revenue—Stamp Duties—New South Wales Stamp Duties Act, 1898, ss. 49, 52—Construction—Intent to Avoid Payment of Duty—Transaction Effective and not Colourable.*—In 1904–5–6 the testator bought properties in the names of his two sons by way of advancement and subsequently received the rents and paid for rates and repairs. He died in 1909. On a claim made by the Commissioner of Stamps against the executors in respect of the said properties it was contended on his behalf that the testator made these gifts “with intent to avoid payment of duty” within the meaning of the New South Wales Stamp Duties Act, 1898, s. 52, and that there was an implied agreement between the testator and his sons that he was to receive rents and profits during his lifetime:—

HELD—that on the evidence the transactions were not colourable, but gifts out and out passing the properties to the sons to the exclusion of all interest in the father, and that the receipt by the father of the rents did not operate to convert a presumptive advancement in favour of the sons into a trust in favour of the father.

Grey *v.* Grey (1677) from Lord Nottingham’s MSS., 2 Swanst. 594) followed.

COMMISSIONER OF STAMP DUTIES *v.* BYRNES, [1911] A. C. 386; 80 L. J. P. C. 114; 104 L. T. 515; 27 T. L. R. 408—P. C.

4. *Revenue—Stamp Duties—Construction of Statute—Company—Sale Consideration partly Consisting of Shares—Duty Assessable on their True, not Necessarily Face, Value—New South Wales Stamp Duties Amendment Act, 1904 s. 14 (5).*—On April 17th, 1907, a reorganised and reconstituted company accepted (in accordance with a provisional agreement dated March 26th, 1907) the transfer of the property and assets of its predecessor and authorised

II. Australia—Continued.

the issue of its own shares fully or partly paid as the consideration. The appellant, under New South Wales Stamp Duties Amendment Act, 1904, sect. 14, sub-sect. 5, assessed the transfer stamp duty on the value of the shares so issued, attributing to them as value the amounts reckoned as paid up:—

HELD—that the Supreme Court was right in holding, on a special case, that April 17th, 1907, was the date of assessment, and that the Commissioner was wrong in refusing to consider evidence tendered to show that the amount reckoned as paid up on the said shares, though *prima facie* evidence of value at the date of issue, was not their real value at the date of assessment.

COMMISSIONER FOR STAMP DUTIES *v.* BROKEN

[HILL SOUTH EXTENDED, [1911] A. C. 439; 80 L. J. P. C. 130; 104 L. T. 755—P. C.]

(c) Queensland.

[No paragraphs in this vol. of the Digest.]

(d) South Australia.

[No paragraphs in this vol. of the Digest.]

(e) Victoria.

See TRUSTS, No. 2.

(f) Western Australia.

See also COMPANIES, No. 45; DAMAGES, No. 3.

5. *Revenue — Dividend — Duties — Western Australia Dividend Duties Act, 1902* (2 Edw. 7, No. 32), ss. 5, 6, 13, and 15—*Construction—Company—Duty on Dividends Declared.*—Under the Western Australia Dividend Duties Act, 1902 (2 Edw. 7, No. 32), ss. 5 and 6, companies which, like the appellants, carry on their business in Western Australia exclusively are not bound to pay duties in respect of any portion of their profits save that which they devote to the payment of dividends declared.

Sect. 13 enacts that the company may deduct from the dividends and retain for its own use the sums payable for duties imposed thereon; and sect. 15 enacts that “when a dividend is distributed before the duty payable in respect thereof is deducted and paid, the duty shall be a debt due by the person receiving the dividend to His Majesty”:—

HELD—that to make sense of sect. 15 the words “deducted and paid” must be read as “deducted or paid,” and that then the section would bear the reasonable and just meaning that where the duties have been paid by the company, and also where though not paid they have been deducted by the company from the dividends declared, the shareholders are not to be liable as debtors to the Crown in respect of them.

GOLDEN HORSESHOE ESTATES Co. *v.* R., [1911]

[A. C. 480; 80 L. J. P. C. 135; 105 L. T. 148—P. C.]

Y.D.

III. BRITISH SOUTH AFRICA.

(a) Bechuanaland.

[No paragraphs in this vol. of the Digest.]

(b) Cape Colony.

6. *Swarm of Locusts—Landowners—Right of Self-protection—Action for Damages.*—In an action by the appellant, *inter alia*, for damage caused by the respondents, who were adjoining proprietors, in that they drove from without his boundary fence a swarm of locusts away from their own lands and in the direction of his cultivated lands:—

HELD—that the respondents were entitled to drive the locusts away as a measure of self-protection and were not responsible for the consequences.

GREYVENSTEYN *v.* HATTINGH, [1911] A. C. 355;

[80 L. J. P. C. 158; 104 L. T. 360; 27 T. L. R. 358—P. C.]

7. *Mutual Will—Construction of Codicil—Gift to the Two Sons, with a Fidei Commissum in Favour of their Eldest Sons—Fidei Commissum not to be Extended beyond what was Clearly Expressed—Gift to the Eldest Grandsons Absolute—Law of Cape Colony.*—It having been decided that on the true construction of a codicil in 1822 to a mutual will by husband and wife in 1812 the two sons of the testators were joint fiduciary heirs in equal shares of the property bequeathed, and that each of them was burdened with a *fidei commissum* in favour of his eldest son and no others:—

HELD—in further litigation after the deaths of their two sons, that the logical result of that decision was that each of the two eldest grandsons became on the death of his father the full and absolute owner of his father's half share free from any further *fidei commissum* and with power to alienate, there being nothing in the codicil to indicate that on the death of the grandsons the property should revert to the heirs *ab intestato* of the testators.

De Jager v. De Jager ((1886) 11 App. Cas. 411) followed.

DE JAGER *v.* FOSTER, [1911] A. C. 450; 80

[L. J. P. C. 138; 104 L. T. 721—P. C.]

(c) Natal.

8. *Mining Contract—“Lease”—Registration—Mortgage—Natal Law 19 of 1884, ss. 2, 3.*—By an indenture in the nature of a mineral contract or lease covering a period of fifty years, the grantee was empowered to work, win, get, carry away, and dispose of all the coal and ironstone in and under certain land in Natal; he was also given extensive rights over the surface of the land. This indenture was not registered in Natal.

HELD—that the indenture was a “lease” within the meaning of the Natal Law 19 of 1884, and that a valid equitable mortgage

III. British South Africa—Continued.

could not be created by deposit of the indenture so as to give the mortgagee priority over the unsecured creditors of the mortgagor.

Decision of the Supreme Court of Natal (29 N. L. R. 249) affirmed.

MUNRO v. DIDCOT, [1911] A. C. 140; 80 L. J. [P. C. 65; 103 L. T. 682; 27 T. L. R. 176—P. C.]

(d) Transvaal.

9. *Mutual Will—Survivor—Maternal Portions Payable at Majority—Rights of Heirs of Predecessor.*—Spouses were married in 1874 and by their ante-nuptial contract it was provided that there should be community of property between them. In 1877 they made a mutual will by which the survivor was appointed sole heir, executor, and administrator of the first-dying and guardian of the minor children, the survivor to educate and maintain the children till majority, when their father's or mother's portion was to be paid to them. In case of remarriage the survivor was to choose two guardians of the "kinderbewijs" then to be provided, but to be entitled to retain the usufruct of the minors' portions during their minority.

HELD—(1) that the survivor and children were joint heirs of the first-dying; and (2) that the will did not impliedly direct a continuance of community of interest known as *boedelhouder-schap* after the dissolution of the marriage by death.

Decision of Transvaal Supreme Court ([1909] T. S. 243) affirmed.

NATAL BANK, LD. v. ROOD, [1910] A. C. 570; [80 L. J. P. C. 22; 103 L. T. 229; 26 T. L. R. 622—P. C.]

IV. CANADA.

See also COMPANIES, No. 19; TRUSTS, No. 12.

(a) Dominion Generally.

10. *Public Lands—Water Rights—Powers of Dominion and Provincial Governments.*—A grant by a Provincial Government to the Dominion Government of Canada of public lands in the province passes the water rights incidental to such lands, so that it is not competent for the Provincial Legislature to deal with them by subsequent legislation.

Attorney-General for British Columbia v. Attorney-General for Canada ((1889) 14 App. Cas. 295) discussed.

BURRARD POWER CO., LD. v. R., [1911] A. C. [87; 80 L. J. P. C. 69; 103 L. T. 404; 27 T. L. R. 57—P. C.]

11. *Railway Lands—Taxation—Exemption until Lands "Sold"—Exemption for Twenty Years after "Grant from Crown."*—Certain lands granted to a railway company were exempted from taxation "until they are either sold or occupied," for twenty years "after the grant thereof from the Crown."

HELD—(1) that the word "sold" involved a completed sale, not merely an agreement for sale made void by the purchaser's default; and (2) that the proper meaning of the expression "grant from the Crown" was a conveyance by letters patent under the Great Seal, and, therefore, that in the case of lands not sold or occupied the period of exemption from taxation ran from the date of the letters patent conveying the lands to the railway company and not from the date of the survey by which the lands were identified.

R. v. CANADIAN PACIFIC RY. CO., MINISTER [OF PUBLIC WORKS OF PROVINCE OF ALBERTA v. CANADIAN PACIFIC RY. CO., [1911] A. C. 328; 80 L. J. P. C. 125; 104 L. T. 3; 27 T. L. R. 234—P. C.]

12. *Railway—Jurisdiction of Railway Board—Appeal to Privy Council—Competency.*—An order made by the Railway Board of Canada ordering two railway companies to construct an elevated viaduct in the City of Toronto held to be *intra vires* and valid.

An appeal lies to the Judicial Committee of the Privy Council from a decision of the Supreme Court of Canada on an appeal thereto from an order of the Railway Board of Canada.

CANADIAN PACIFIC RY. CO. v. CITY OF TORONTO [CORPORATION AND GRAND TRUNK RY. CO. OF CANADA, [1911] A. C. 461; 81 L. J. P. C. 5; 104 L. T. 724; 27 T. L. R. 448—P. C.]

13. *Railway—Sidings—Action for Damages—Removal of Siding Constructed for Convenience of Traffic—Limitation—Railway Board's Finding of Fact Conclusive—Canadian Railway Act, 1903, ss. 42, 242.*—The appellant company having constructed a spur track or siding into the respondents' yard for the convenience of traffic, in November, 1904, cut it off, and on February 19th, 1906, the Board of Railway Commissioners under sects. 214 and 253 of the Dominion Railway Act of 1903, directed its restoration, which was carried out on September 28th, 1906. In an action for damages for breach by the appellants of their statutory obligation between October 31st, 1904, and September 28th, 1906 :—

HELD—that under sect. 42 of the Act of 1903 the order of the Board, affirmed as it was by the Supreme Court on appeal, was conclusive as to the question of fact, that the facilities previously enjoyed by the respondents were of a kind to which they were entitled.

HELD, ALSO—that the special provisions of the Act as to one year's limitation relate to damages sustained by the construction or operation of the railway, and do not apply to the refusal of facilities by means of a siding outside the railway as constructed, which is not an act done in the operation of the railway.

CANADIAN NORTHERN RY. CO. v. ROBINSON, [1911] A. C. 739; 105 L. T. 389—P. C.]

14. *Railway Construction—Government Guarantee—Agreement to Implement Guarantee "so as to make the Proceeds of the said Bonds equal to 75 per cent. of the Cost of Construction"*

IV. Canada—Continued.

—*Liability of Government.*]—By a contract made between the appellant company and the Government with respect to the construction of a railway, it was agreed as follows: "For the purpose of aiding the company in the construction of the western division, the Government shall guarantee payment of the principal and interest of an issue of bonds to be made by the company for a principal amount equal to 75 per cent. of the cost of construction of the said division." Bonds were issued bearing interest at 3 per cent., but the market price of Government stock fell, and the proceeds of the issue did not amount to 75 per cent. of the cost of construction. By a subsequent agreement it was agreed that the Government should "implement for the purposes and subject otherwise to the provisions of the said contract its guarantee of the bonds of the said company to be issued for the cost of construction of the said western division in such manner as may be agreed upon, so as to make the proceeds of the said bonds so to be guaranteed a sum equal to 75 per cent. of the cost of construction."

HELD—that the liability of the Government under this agreement was not a secondary liability as guarantors only, the primary liability falling on the company, but that the Government were liable to make the bonds of the first issue up to their nominal value without recourse over against the company.

GRAND TRUNK PACIFIC RY. CO. v. R., 105 [L. T. 645—P. C.]

15. *Jurisdiction of Railway Commissioners—Condition as to Construction of Railway on Streets—Compensation to Abutting Landowners.*]—A municipal corporation granted to the appellant railway company the right to construct and work a line of railway along certain streets in the municipality. The appellants then applied to the Board of Railway Commissioners under the provisions of the Canadian Railway Act, 1906, for approval of the location of the line of railway. The Board granted the application subject to the condition that the appellants should "make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway along any street."

HELD—(1) that the provisions of sect. 237 of the Railway Act as to the extent of the obligation of the railway company to make compensation could not be altered, abrogated, or enlarged by the exercise of the Railway Board's administrative power under sect. 47 of the Act, and that the condition imposed by the Board was therefore *ultra vires*; and (2) that in these circumstances the order of the Railway Board containing the condition and not merely the condition itself could not stand, and that the parties must be left to come to a fresh arrangement under a new application.

GRAND TRUNK PACIFIC RY. CO. v. LANDOWNERS, [&c., OF FORT WILLIAM, 105 L. T. 649; 28 T. L. R. 37—P. C.]

16. *Contract between Banks—Pledge or Sale of Assets—Bank Act (Rev. Stat. Can.), 1906, c. 29.*]—The Bank of O. was in difficulties, and would have been compelled to close its doors if it had been unable to obtain assistance. The Bank of M. came to its assistance, and, by agreement between the two banks, the Bank of M. agreed to "purchase by way of discount and re-discount at the rate of 6 per cent. all the call and current loans and overdue debts of the O. Bank . . . it being understood that the Bank of M. shall be entitled to the benefit and immediate transfer of all and every security and securities held for all or any of such loans and overdue debts." And, further, "for the indirect benefit thereby accruing to the Bank of M. it agrees to pay to the O. Bank, or to allow and credit in the final adjustment of accounts, the sum of 150,000 dollars."

HELD—that this was not a sale by the O. Bank of the whole or part of its assets within the meaning of the Canadian Bank Act, and was therefore not *ultra vires* and void as not having been carried out in the manner prescribed by the Act.

Decision of the Court of Appeal of Ontario (21 Ontario L. R. 1) affirmed.

McFARLAND v. BANK OF MONTREAL AND [ROYAL TRUST CO., [1911] A. C. 96; 80 L. J. P. C. 83; 103 L. T. 436; 27 T. L. R. 55—P. C.]

17. *Trade Mark—Registration—Essentials of Trade Mark—"Standard"—Canadian Trade Mark and Design Act, 1879.*]—The Canadian Trade Mark and Design Act, 1879, provides that the registration of a trade mark may be refused "if the so-called trade mark does not contain the essentials necessary to constitute a trade mark, properly speaking"; but it does not define the essentials of a trade mark.

HELD—that the word "Standard" being a common English word, used to convey the notion that the goods to which it is applied are of high class or superior quality, cannot be properly registered as a trade mark under the Act.

STANDARD IDEAL CO. v. STANDARD SANITARY [MANUFACTURING CO., [1911] A. C. 78; 80 L. J. P. C. 87; 103 L. T. 440; 27 T. L. R. 63; 27 R. P. C. 789—P. C.]

18. *Extradition—Treaty with Russia—Arrest without Formal Requisition from Foreign State—Validity.*]—Art. VIII. of the Extradition Treaty with Russia provides that a requisition for extradition shall be made through the Diplomatic agents of the high contracting parties, and Art. IX. provides that, after the requisition, the authorities of the State applied to shall proceed to the arrest of the fugitive.

HELD—that there was no inconsistency between the provisions of the Canadian Extradition Act and the provisions of the Treaty with Russia, and that Art. IX. did not involve that there can be no arrest of a fugitive for the purpose of extradition until there has been a formal requisition under Art. VIII.

ATTORNEY-GENERAL FOR CANADA v. FEDO- [RENKO, [1911] A. C. 735; 105 L. T. 343; 27 T. L. R. 541—P. C.]

IV. Canada—Continued.

19. *New Brunswick—Succession Duty—Deposit in Bank—Depositor Domiciled in Nova Scotia.*—The testator, whose domicile was in Nova Scotia, had at the time of his death two sums on deposit in the St. John's (New Brunswick) branch of the Bank of British North America.

HELD—that under the Succession Duties Acts of New Brunswick succession duty was payable on those two sums.

R. v. LOVITT, 105 L. T. 650; 28 T. L. R. 41—
[P. C.]

(b) British Columbia.

See also COMPANIES, No. 17.

20. *Action of Ejectment—Validity of Dominion Lease to Plaintiffs—Deceit on the Crown—Plaintiffs without Notice of Previous Inconsistent Grant (if any).*—The appellants claimed to have been in possession of the property in suit under a grant from the Dominion Government on June 8th, 1887, of the use of land contiguous thereto as a park, and also under a lease from the Dominion dated November 1st, 1908, for ninety-nine years, which did not expressly include the property in suit and was moreover subject to any existing leases of portions of the said land.

HELD, in a suit by the respondents, who derived title under a Dominion lease dated February 14th, 1899—that the appellants as defendants in possession could not object thereto as not having been granted under the Great Seal, since that point had not been put forward in the Courts below; nor on the ground that it had been obtained by deceit practised on the Crown, since the respondents were without notice, actual or constructive, of a previous Crown grant (if any) to the appellants inconsistent therewith.

CITY OF VANCOUVER v. VANCOUVER LUMBER
[Co., [1911] A. C. 711; 105 L. T. 464—P. C.]

21. *Mortgage—Suit for Redemption of Mortgage—Power of Sale—Duty of Mortgagees—Alleged Inadequacy of Price—Purchasers Not Charged with Collusion.*—The Court of Appeal of British Columbia found that a sale by the assignees of a mortgage in the exercise of a power of sale contained therein was invalid as against the mortgagor plaintiffs and decreed redemption, on the ground that there had been reckless disregard of their interests in the conduct of the sale. It appeared that the pleadings contained no charge of fraud or collusion or bad faith against the defendant purchasers, that there had been no notice before trial that inadequacy of price would be relied upon as evidence thereof, and that the purchasers had accordingly given no counter-evidence of its sufficiency.

HELD—that the finding of the first Court to the effect that the sale was valid and regular ought not to have been reversed, and that the failure in the circumstances of the purchasers to produce counter-evidence did not justify a finding in effect that the sale was fraudulent.

HADDINGTON ISLAND QUARRY Co. v. HUSON,
[1911] A. C. 722; 105 L. T. 467—P. C.]

(c) Lower Canada.

[No paragraphs in this vol. of the Digest.]

(d) Manitoba.

[No paragraphs in this vol. of the Digest.]

(e) Ontario.

See also CONFLICT OF LAWS, No. 2;
DAMAGES, No. 2; HUSBAND AND
WIFE, No. 7; INSURANCE, No. 2;
NEGLIGENCE, No. 13.

22. *Common School Fund—Lands in Ontario—Rights of Quebec—Submission of Questions in Dispute to Arbitration—Jurisdiction of Arbitrators to Entertain Certain Claims by Quebec.*

HELD—that the arbitrators appointed by the Provinces of Ontario and Quebec for the ascertainment and determination of the principal of the Common School Fund and the amount for which Ontario was liable had no jurisdiction to entertain claims by Quebec against Ontario in respect of deductions and remissions allowed by Ontario to the purchasers of certain of the common school lands.

Decision of Supreme Court of Canada (42 Can. S. C. R. 161) affirmed.

ATTORNEY-GENERAL FOR THE PROVINCE OF
[QUEBEC v. ATTORNEY-GENERAL FOR THE
PROVINCE OF ONTARIO, [1910] A. C. 627;
80 L. J. P. C. 35; 103 L. T. 328; 26 T. L. R.
679—P. C.]

23. *Indian Lands—Extinguishment of Indian Title—Payment by Dominion—Liability of Ontario.*—The Province of Ontario is not liable to pay a proportion of the annuities and other moneys which the Dominion of Canada bound itself in the name of the Crown to pay to the Salteaux tribe of the Ojibway Indians under the Treaty of October 3rd, 1873.

Decision of Supreme Court of Canada (42 Can. S. C. R. 1) affirmed.

DOMINION OF CANADA v. PROVINCE OF
[ONTARIO, [1910] A. C. 637; 80 L. J. P. C.
32; 103 L. T. 331; 26 T. L. R. 681—P. C.]

(f) Quebec.

See also DAMAGES, No. 4; INSURANCE
No. 21.

24. *Extra-provincial Corporation Carrying on Business in Province—Employment of Traveller by Foreign Corporation—Quebec Act (4 Edw. 7, c. 34).*—The Quebec Act (4 Edw. 7, c. 34) enacts that no extra-provincial corporation shall carry on business in the province of Quebec unless it has obtained a licence. An American corporation employed a traveller to obtain orders in the province of Quebec, which orders were sent to the office of the corporation in the United States, from which the goods ordered were sent direct to the purchaser, who paid the corporation direct.

HELD—that the corporation were not carrying on business in the province of Quebec within the meaning of the Act.

STANDARD IDEAL Co. v. STANDARD SANITARY
[MANUFACTURING Co., [1911] A. C. 78; 80
L. J. P. C. 87; 103 L. T. 440; 27 T. L. R.
63; 27 R. P. C. 789—P. C.]

IV. Canada—Continued.

25. Rights of Fishing—River Navigable and Floatable—Exclusive Right of the Crown to Fishing—Letters Patent in Respect of Lands did not Convey Fishing Rights—Construction.]—The appellants were grantees of lands on both sides of a river which was shown by the evidence to be navigable and floatable at such locality and from thence to its mouth.

HELD—that the right of fishing in the river vested exclusively in the Crown, and that, as the letters patent to the appellants in 1883 granting the said lands were plain and unambiguous in their terms and did not specifically grant rights of fishing in the river opposite thereto, the patentees could not claim such rights under previous or subsequent correspondence as enlarging the terms of the grants, or by reason of such rights having been exercised by them continuously from the date of the patents without hindrance or interference.

WYATT v. ATTORNEY-GENERAL OF QUEBEC, [1911] A. C. 489; 81 L. J. P. C. 63; 105 L. T. 259—P. C.

26. Montreal City Charter (62 Vict. c. 58), s. 14, art. 338—Construction—Penalties.]—Art. 338 of the Montreal City Charter (62 Vict. c. 58) provides "that every member of the council who . . . authorises any expenditure of money exceeding the amount previously voted and legally placed at the disposal of the council or any committee" shall incur the penalties inflicted by the judgment under appeal. The appellants, being the finance committee of the council, acting under the instructions of the council, authorised the expenditure required to defray the cost of the city's representation by its mayor at the Paris fêtes. At the time when provision was made to defray this cost, the appropriation prescribed by art. 334 had been duly voted and the required funds were available and legally at the disposal of the city. A dissenting ratepayer sued the appellants under art. 338.

HELD—that the appellants had not contravened art. 338 in any respect. The case was not one of unauthorised expenditure by them. It was expenditure under the authority of the council, and even if there had been some irregularity in procedure, which was by no means clear, it could not justify the infliction of penalties attached by art. 338 to acts and defaults of a very different description.

LAPOINTE v. LARIN, [1911] A. C. 520; 105 L. T. 263—P. C.

V. CEYLON.

See also LANDLORD AND TENANT, No. 18.

27. Possessory Action—Right of Trustee or Manager to bring Action—Ceylon Ordinance 22 of 1871.]—The plaintiff, the trustee and manager of a mosque, was forcibly ejected from its possession by the defendants.

HELD—that the case was one for which the possessory remedy of interdiction was suit-

able and competent under the Ceylon Ordinance 22 of 1871.

ABDUL AZEEZ v. ABDUL RAHIMAN MUDLIYAR, [1911] A. C. 746; 105 L. T. 417; 27 T. L. R. 580—P. C.

28. Joint Will of Husband and Wife—Community of Property—Construction—Gift of Usufruct for Life to Wife and Dominion to the Son—Ceylon Ordinance 15 of 1876, s. 26.]—By the joint will dated April 27th, 1878, of husband and wife married in community of property it was directed that certain properties including the synagogue and cottage in suit "shall be vested in me the testatrix" subject to the condition that "our executors shall not sell or otherwise alienate" the same; "nor shall I the testatrix have the power to sell or otherwise alienate the same or any of them, but I shall have a life interest therein." Under a clause headed "Inheritance upon the death of both of us" the synagogue and cottage were directed to vest in their son. The will also directed that the synagogue "should not be sold or in anywise alienated or incumbered," but should devolve on the lawful heirs of the above-named devise, and in the absence of any such lawful heirs on the heirs instituted by the will including the said son or his or her lawful heirs. The testator died in 1878; the testatrix in 1907, after adiating the inheritance and accepting benefit under the will; the son in 1882 intestate.

HELD—that according to the true construction of the joint will a bare usufruct and not the dominion was conferred on the testatrix in respect of both properties, and that subject thereto the son took a vested interest in the same, transmissible to his heirs.

HELD, ALSO—that under Ceylon Ordinance 15 of 1876, sect. 26, the first appellant, as the deceased son's surviving spouse, notwithstanding her remarriage to the second appellant, took by inheritance one half of his property.

SAMARADIWAKARA v. DE SARAM, [1911] A. C. 753; 105 L. T. 345—P. C.

29. Jurisdiction of District Court—Civil Procedure Code, 1889—Agreement for Lease—Continuing Breach—Damages—Liquidated Damages or Penalty.]—A contract relating to a house and land at K. was made at C. between the appellants, the owners of the property, who resided at C., and the respondents, who resided at K.

HELD—that under the Ceylon Civil Procedure Code, 1889, the District Court at K. had jurisdiction to entertain an action brought by the respondents for breach of the agreement.

An agreement for a lease of a house and land contained a provision that the lessor should execute certain work described in vague and general language, upon the premises to be demised by a fixed date, and the payment of a sum of Rs. 150 per day on non-completion by that date was stipulated for. In an action by the lessee against the lessor for damages for not completing the work by the date fixed or at all:—

HELD—that the breach was a continuing breach up to the institution of the action, and

V. Ceylon—Continued.

that the sum stipulated for was liquidated damages and not a penalty :

HELD, FURTHER that, it being admitted that the agreement was in fact abandoned and would never be carried out, the Court had jurisdiction to award damages for breach of the agreement down to the date of the judgment.

DE SOYSA *v.* DE PLESS POL, 195 L. T. 642—
[P. C.]

VI. CHANNEL ISLANDS.

[No paragraphs in this vol. of the Digest.]

VII. GIBRALTAR.

[No paragraphs in this vol. of the Digest.]

VIII. HONG KONG.

[No paragraphs in this vol. of the Digest.]

VIII A. ISLE OF MAN.

See SPECIFIC PERFORMANCE, No. 1.

IX. JAMAICA.

[No paragraphs in this vol. of the Digest.]

IX A. MALTA.

[No paragraphs in this vol. of the Digest.]

IX B. MAURITIUS.

[No paragraphs in this vol. of the Digest.]

X. NEWFOUNDLAND.

30. Railway—Telegraph Company—“Exclusive Right”—*Right of Railway Company to Erect and Work Telegraph Lines.*—By an agreement between a railway company and a telegraph company, the railway company granted to the telegraph company the exclusive right for a term of years to enter upon the railway company's lands and to build, erect, maintain, and operate upon and along those lands as many lines of telegraph for the purpose of the telegraph company's business as that company might deem necessary, and a special wire for the use of the railway company for use in and about its management. By a subsequent clause the railway company agreed not to pass or transmit commercial messages over their special wire except for the benefit and account of the telegraph company.

HELD—that the “exclusive right” granted to the telegraph company of entering and erecting and working the telegraph lines did not exclude the right of the railway company to erect and work telegraph lines on its own property for the purposes of its railway business.

REID NEWFOUNDLAND COMPANY *v.* ANGLO-
[AMERICAN TELEGRAPH COMPANY, [1910]
A. C. 560 ; 80 L. J. P. C. 20 ; 103 L. T. 145 ;
26 T. L. R. 614—P. C.]

XI. NEW ZEALAND.

See also BANKRUPTCY, No. 1.

31. Family Protection—Will—Discretion of the Court not Interfered With—Provision Ordered for Testator's Married Daughters—*New Zealand Family Protection Act, Part II. (No. 60 of*

1908), s. 33 (1).]—*New Zealand Family Protection Act, Part II. (No. 60 of 1908), sect. 33, sub-sect. 1, provides that in cases where any person dies leaving a will without making adequate provision therein for the proper maintenance and support of the testator's wife, husband, or children the Court may, at its discretion, order that such provision as it thinks fit should be made out of the estate of the testator for such wife, husband, or children.*

The Court below having exercised its discretion in favour of three married daughters of the testator by a wife who had divorced him, his will disposing of all his estate in favour of his second wife and her children, their Lordships declined to interfere ; and approved the general view taken by the Court below as to the proper scope and application of the powers conferred by the Act.

ALLARDICE *v.* ALLARDICE, [1911] A. C. 730
[—P. C.]

XII. SHANGHAI.

[No paragraphs in this vol. of the Digest.]

XIII. SIERRA LEONE.

[No paragraphs in this vol. of the Digest.]

XIII A. STRAITS SETTLEMENTS.

32. False Imprisonment—Want of Reasonable and Probable Cause—Onus of Proof.—The appellant, who was born in Malacca and was a British subject, went to a Chinese temple and took part in a ceremony in connection with a charm against sickness. The police, thinking that the temple was the headquarters of a secret society, on that day made a raid upon it. One of the respondents laid an information against the appellant under the provisions of the Banishment Enactment, 1900, in force in the Federated Malay States, and the other respondent arrested him on a warrant in connection with the disturbance in the temple. The appellant was confined in prison for a fortnight, but ultimately no charge was made against him. The appellant thereupon brought an action for false imprisonment against the two respondents. He gave evidence describing his arrest, denying the existence of any evidence against him, and his ignorance of the reasons for his arrest.

HELD—that the appellant had not satisfied the burden of the proof imposed upon him by sect. 18 of the Banishment Enactment, 1900, inasmuch as mere innocence was not even *prima facie* proof of want of reasonable and probable cause, the burden of which proof lay on the appellant in accordance with the terms of the enactment.

YAP HON CHIN *v.* JONES-PARRY, 28 T. L. R. 89
[—P. C.]

XIV. TRINIDAD.

[No paragraphs in this vol. of the Digest.]

XV. ZANZIBAR.

[No paragraphs in this vol. of the Digest.]

XVI. INDIA.

33. Pensions—Indian Civil Servant—Retiring Annuity or Pension—Liability to Assignmen

XVI. India—Continued.

or Sequestration—East India Annuity Funds Act, 1874 (37 & 38 Vict. c. 12)—Pensions Act, 1871 (India), Act No. XXIII. of 1871, ss. 4, 11, 12.]—The East India Annuity Funds Act, 1874, did not terminate the existence of the Civil Annuity Funds therein referred to or make the Pensions Act, 1871 (India), applicable to annuities payable to retiring Indian civil servants as pensions granted or continued by the Government of India within the meaning of sect. 11 of the Pensions Act, 1871.

The retiring annuity or pension of a covenanted member of the Indian Civil Service is not subject to the restrictions imposed by sects. 11 and 12 of the Pensions Act, 1871 (India), and is liable to sequestration in the High Court of Justice in England.

Semble, that the Pensions Act, 1871 (India), applies only to British India and has no application to proceedings in England, and does not operate to defeat, in England, assignments of or charges on annuities or pensions of retiring Indian civil servants.

Decision of Joyce, J. (104 L. T. 747; 27 T. L. R. 414; 55 Sol. Jo. 479) affirmed.

KNILL *v.* DUMERGUE, [1911] 2 Ch. 199; 80 [L. J. Ch. 708; 105 L. T. 178; 27 T. L. R. 525; 55 Sol. Jo. 648—C. A.

34. Hindu Joint Family—Contract by Managing Members of Family—Power to Sue.—The managing members of a Hindu joint family, who are entrusted with the management of a business carried on in the interests of the family, are entitled to enforce at law the ordinary business contracts entered into by them, without joining the other members of the family as plaintiffs.

KISHEN PARSHAD *v.* HAR NARAIN SINGH, 27 [T. L. R. 243—P. C.

35. Will—Hindu Law—Bequest to a Class—Unborn Persons.—By Hindu law, where there is a gift to a class some of whom may be incapacitated from taking because not born at the time of the testator's death, and where there is no other objection to the gift, it enures for the benefit of those members of the class who are capable of taking.

Observations of Wilson, J., in *Ram Lal Sett v. Kanai Lal Sett* (12 Indian L. R., Calcutta Series 663) approved.

BHAGABATI BARMANYA *v.* KALI CHARAN [SINGH, 27 T. L. R. 267—P. C.

36. Ejectment—Land in Cantonment—Proprietors or Licensees.]

HELD—that certain land within the Poona cantonment was only held by the appellants on military or cantonment tenure, and that the Government could resume it at their pleasure, subject to making compensation for buildings erected by the licensees thereon.

GHASWALA *v.* SECRETARY OF STATE FOR INDIA [IN COUNCIL, 27 T. L. R. 521—P. C.

37. Minor—Specific Performance.—It is not within the competence of a manager of a minor's

estate, or within the competence of a guardian of a minor, to bind the minor or the minor's estate by a contract for the purchase of immovable property. Therefore, such a contract, if entered into, cannot be specifically enforced.

MIR SARWARJAN *v.* FAKARUDDIN MAHOMED [CHOWDHRY, 28 T. L. R. 56—P. C.

DEPOSIT.

See BAILMENT; BANKERS; PARLIAMENT; PRACTICE, No. 20; SALE OF LAND; SPECIFIC PERFORMANCE, No. 2; TRAMWAYS, No. 3.

DEPOSITIONS.

See CRIMINAL LAW AND PROCEDURE; EVIDENCE; MAGISTRATES, No. 13.

DERELICT.

See SHIPPING AND NAVIGATION.

DESCENT AND DISTRIBUTION.

I. DEVOLUTION OF ESTATE	COL. 174
[No paragraphs in this vol. of the Digest.]	
II. DISTRIBUTION OF ASSETS	174

I. DEVOLUTION OF ESTATE.

[No paragraphs in this vol. of the Digest.]

II. DISTRIBUTION OF ASSETS.

1. Brothers and Sisters of Half-blood—Children of Father who had Married his Deceased Wife's Sister—Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7), c. 47.]—The children of an intestate's father, who died before the passing of the Deceased Wife's Sister's Marriage Act, 1907, by his marriage with his deceased wife's sister are entitled to share equally with the intestate's brothers and sisters of the whole blood in the distribution of the intestate's personal estate.

IN RE GREEN, GREEN *v.* MEINALL, [1911] 2 Ch. [275; 80 L. J. Ch. 623; 105 L. T. 360; 27 T. L. R. 490; 55 Sol. Jo. 552—Warrington, J.

See S.C. HUSBAND AND WIFE, No. 4.

DESIGNS.

See PATENTS AND DESIGNS; TRADE MARKS.

DETINUE AND DETENTION.

See SALE OF GOODS, VI. ; TROVER AND
CONVERSION.

DEVISE.

See WILLS.

DIGNITIES.

See PEERAGES AND DIGNITIES ; SCOT-
TISH LAW.

DILAPIDATIONS.

See ECCLESIASTICAL LAW ; LANDLORD
AND TENANT.

DIRECTORS.

See COMPANIES.

DISABILITIES.

See HUSBAND AND WIFE ; INFANTS ;
LUNATIC.

**DISCOVERY, INSPECTION &
INTERROGATORIES.**

I. DISCOVERY.	COL.
(a) In general	175
(b) Privilege	176
[No paragraphs in this vol. of the Digest.]	
(c) Ship's Papers	176
[No paragraphs in this vol. of the Digest.]	
II. INSPECTION	176
III. INTERROGATORIES	176

See also EXECUTORS, No. 12 ; HUSBAND
AND WIFE, No. 32 ; PRACTICE, No. 20.

I. DISCOVERY.

(a) In general.

1. *Bankruptcy* — *Application by Petitioning
Creditor*—*Bankruptcy Rules*, r. 72—*Bankruptcy
Act*, 1883 (46 & 47 Vict. c. 52), s. 27.]—An order
for discovery or interrogatories will not be made
to assist a petitioning creditor in proving the
allegations in a bankruptcy petition. A peti-
tioning creditor in an affidavit verifying the

petition should confine himself to facts within
his own knowledge.

IN RE A DEBTOR (No. 7 of 1910), [1910] 2 K. B.
[59 ; 17 Manson, 263 ; *sub nom.* IN RE A
DEBTOR, 102 L. T. 691 ; *sub nom.* IN RE
A DEBTOR, EX PARTE PETITIONING CREDI-
TORS, 26 T. L. R. 429 ; *sub nom.* IN RE
A DEBTOR, EX PARTE TAYLOR & Co., 54
Sol. Jo. 459—C. A.

2. *Affidavit of Documents*—*Further Affidavit
— Specific Documents* — *R. S. C.*, Ord. 31,
r. 19A (3).]—To justify an application for dis-
covery of documents under Ord. 31, r. 19A (3),
the party making the application must in his
affidavit name and specify the particular docu-
ments of which he desires discovery ; a general
allegation that certain classes of documents (*e.g.*,
telegrams from A. to B. between 1900 and 1906
containing instructions or requests or comments,
as to inquiries upon specified subjects) are in the
possession of the opposite party and ought to be
produced is not sufficient.

Per Moulton, L.J. : Order 31, r. 19A (3), is not
a process of discovery, but only a process in aid
of discovery, and documents must be so specified
that they can at once be identified.

White v. Stafford & Co. ([1901] 2 K. B. 241)
followed.

HUNTLEY BROTHERS *v.* OWNERS OF BACKWORTH
[COLLIERIES, [1911] W. N. 34 ; 130 L. T. Jo.
386 ; 45 L. J. N. C. 90—C. A.

(b) Privilege.

[No paragraphs in this vol. of the Digest.]

(c) Ship's Papers.

[No paragraphs in this vol. of the Digest.]

II. INSPECTION.

See also LOCAL GOVERNMENT, No. 18.

3. *Goods Sold and Delivered*—*Refusal to Accept
Delivery*—*Proportion of Slack in Load of Coal*—*Liberty
to Inspect and Experiment for Purposes
of Evidence*—*R. S. C. (I.)*, Ord. 50, r. 4—*R. S. C.*,
Ord. 50, r. 3.]—Where the defendant, who was
sued for the price of a canal boat load of coal,
pleaded that he had refused to accept delivery
thereof under the terms of his contract on the
ground that the coal contained an unreasonable
quantity of slack, applied after delivery of his
defence for an order, under R. S. C. (I.), Ord. 50,
r. 4 [R. S. C., Ord. 50, r. 3], that he be at liberty
to inspect the said coal, and to ascertain the
proportion of slack contained in it, and for this
purpose to screen and weigh it :—

HELD—that inasmuch as five months had
elapsed from tender of the coal to the date of
the application the order ought not to be made.

WALLACE BROTHERS *v.* SCALLY, 45 J. L. T. 154—
[C. A., Ireland.

III. INTERROGATORIES.

See also No. 1, *supra*.

4. *Malicious Prosecution*—*Information upon
which Defendants Acted*—*Steps and Precau-
tions taken by Defendants.*]—In an action for

III. Interrogatories—Continued.

malicious prosecution the plaintiff sought to administer, *inter alia*, the following interrogatory:—"4. What information (if any) had you that induced you to prosecute the plaintiff for stealing gas? What steps (if any) had you taken before commencing the said prosecution to ascertain whether the charge was true or not? What grounds (if any) had you for supposing that the plaintiff had committed the offence charged? Did you before you commenced the said prosecution take any and what precautions, or make any and what inquiries as to the truth of the said charge, and what was the result of each such inquiry?" The interrogatory was disallowed by the Master.

HELD (by the full C. A., Kennedy, L.J., dissenting)—that the interrogatory had been rightly disallowed.

MAASS *v.* GAS LIGHT AND COKE CO., [1911]
[2 K. B. 543; 80 L. J. K. B. 1313; 104 L. T. 767; 27 T. L. R. 473; 55 Sol. Jo. 566—C. A.]

5. *Interrogatories for Purpose of Ascertaining Names of Opponent's Witnesses.*—Interrogatories put for the mere purpose of obtaining information as to the evidence by which the opposite party intends to prove the facts which he alleges are inadmissible.

In an action brought by the plaintiff to recover damages in respect of personal injuries occasioned to him through being bitten by a dog belonging to the defendant, which was alleged by the plaintiff to have been, to the knowledge of the defendant, accustomed to bite mankind, an order was made that, if the plaintiff intended to give evidence of any specific occasion or occasions on which the dog had bitten persons, he should give particulars thereof, and the plaintiff accordingly gave particulars stating that a person was bitten by the defendant's dog in a certain street in or about June or July, 1908, and another person was bitten by the dog in another street in or about July or August, 1908. The defendant thereupon applied at chambers for leave to administer interrogatories asking the names of the persons alleged in the plaintiff's particulars to have been so bitten. The Master granted the application, and on appeal the judge affirmed his decision.

HELD—that the interrogatories were inadmissible on the ground that they were put merely with the object of ascertaining the names of witnesses by whom the plaintiff proposed to establish his case.

KNAPP *v.* HARVEY, [1911] 2 K. B. 725; 80 [80 L. J. K. B. 1228; 105 L. T. 473—C. A.]

6. *Material Facts—Loan—Defence that Plaintiff was an Unregistered Money-lender—Previous Loan Transactions—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), ss. 2, 6.]—An action was brought to enforce a charge given by the borrower to secure a loan with interest at 10 per cent. upon certain surplus moneys held on his behalf by the trustees of a private Act of Parliament which authorised them to

raise a fund for the payment of the borrower's debts existing at the date of the Act. The trustees, who were defendants to the action, raised the defence that the plaintiff was a money-lender within the meaning of the Money-lenders Act, 1900, and was not registered under that Act.

HELD (Moulton, L.J., dissenting)—that these defendants were entitled to administer interrogatories to the plaintiff as to what (if any) other loans he had transacted during a reasonable period before the loan in question in the action, and on what security and at what rate of interest, and generally as to the circumstances and terms of such loans, as being facts relevant to the issue raised by the defence; but that they were not entitled to require the plaintiff to disclose the names of the borrowers.

MARRIOTT *v.* CHAMBERLAIN ((1886) 17 Q. B. D. 154) discussed.

NASH *v.* LAYTON, [1911] 2 Ch. 71; 80 L. J. Ch. 636; 104 L. T. 834—C. A.]

DISEASES.

See ANIMALS; PUBLIC HEALTH.

DISHONOUR.

See BILLS OF EXCHANGE.

DISORDERLY CONDUCT.

See CRIMINAL LAW AND PROCEDURE
INTOXICATING LIQUORS.

DISORDERLY HOUSES.

See CRIMINAL LAW AND PROCEDURE.

DISTRESS.

	COL.
I. IN GENERAL	178
[No paragraphs in this vol. of the Digest.]	
II. EXEMPTIONS.	
(a) Generally	179
[No paragraphs in this vol. of the Digest.]	
(b) Goods of Third Persons.	179
III. PROCEDURE.	
(a) Bailiff	180
(b) Possession	181
(c) Rescue	181
[No paragraphs in this vol. of the Digest.]	
(d) Sale	181
[No paragraphs in this vol. of the Digest.]	

See also ANIMALS, No. 5.

I. IN GENERAL.

[No paragraphs in this vol. of the Digest.]

II. EXEMPTIONS.

(a) Generally.

[No paragraphs in this vol. of the Digest.]

(b) Goods of Third Persons.

1. *Hire-purchase Agreement Made by Wife of Tenant—Goods in Possession or Disposition of Tenant—Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), ss. 1, 4 (1).—By sect. 1 of the Law of Distress Amendment Act, 1908, exemption from distress for rent is given in respect of the goods of a person not being the tenant of the premises; and by sect. 4, the Act is not to apply to "goods comprised in any bill of sale, hire-purchase agreement, or settlement made by such tenant, nor to goods in the possession, order, or disposition of such tenant" as the reputed owner thereof.

Piano manufacturers lent to the wife of the tenant of a house a piano under a hire-purchase agreement under which the piano was to continue to be the property of the owners until all the instalments payable for the hire of the piano were paid. Before all these instalments were paid, the landlord levied a distress for rent due by the tenant and seized the piano which was in the premises. In an action by the owners of the piano for illegal distress:—

HELD—that the words "made by such tenant" in sect. 4 apply to "bill of sale" and to "hire-purchase agreement" as well as to the word "settlement," and that therefore a hire-purchase agreement to come within this exception must be one made by the tenant.

HELD—that the piano did not come within the exception in sect. 4 either as being "goods comprised in a hire-purchase agreement" or as "goods in the possession, order, or disposition of such tenant" as the reputed owner thereof, and that therefore the piano came within the protection given by sect. 1, and was exempt from the distress.

Shenstone v. Freeman ([1910] 2 K. B. 84) approved.

Decision of Div. Ct. (102 L. T. 687; 26 T. L. R. 459; 54 Sol. Jo. 478) affirmed.

ROGERS, EUNGBLUT & Co. v. MARTIN, [1911] 1 K. B. 19; 80 L. J. K. B. 208; 103 L. T. 527; 75 J. P. 10; 27 T. L. R. 40; 55 Sol. Jo. 29—C. A.

2. *Piano Hired by Lessee of Theatre—Trade Custom—Goods in Possession, Order, or Disposition of Lessee—Reputed Ownership—Liability of Piano to Distress—Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), ss. 1, 4.—In the absence of evidence establishing a custom that pianos are so constantly hired to lessees of theatres for theatrical purposes as to exclude the doctrine of reputed ownership, the Court cannot assume as a matter of law that the lessee of a theatre is not the true owner of a piano which is in the theatre. In such a case the piano is not exempted by the Law of Distress Amendment Act, 1908, from liability to distress by the landlord of the theatre.

CHAPPELL & Co. v. HARRISON, 103 L. T. 594; [75 J. P. 20; 27 T. L. R. 85—Div. Ct.]

3. *Declaration of Ownership—Signature to Declaration—Partnership—Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), s. 1—*Statutory Declarations Act, 1835* (5 & 6 Will. 4, c. 62).—The declaration to be made under sect. 1 of the Law of Distress Amendment Act, 1908, by an under-tenant, lodger, or other person whose goods have been seized under a distress need not be a statutory declaration under the Statutory Declarations Act, 1835.

Where the goods belong to a partnership the declaration need not be signed by each member of the firm. It is sufficient if it is signed by one partner with the authority of the other members of the firm.

ROGERS, EUNGBLUT & Co. v. MARTIN, 102 L. T. 687; 26 T. L. R. 459; 54 Sol. Jo. 478—Div. Ct.

See S. C. on appeal, No. 1, *supra*, when the appeal on the above points was abandoned.

III. PROCEDURE.

(a) Bailiff.

4. *Possession Money—Distress for Sum not Exceeding 20*l.*—Distress (Costs) Act, 1817* (57 Geo. 3, c. 93), s. 1; *Schedule—Law of Distress Amendment Act, 1888* (51 & 52 Vict. c. 21), s. 8—*Distress for Rent Rules, 1888*, rr. 15, 16, *Appendix II., Scale II.*—By sect. 1 of the Distress (Costs) Act, 1817, no person making a distress for rent where the sum demanded and due shall not exceed 20*l.* shall take other or more charges than those set forth in the schedule; and in the schedule the charge for "man in possession" is 2*s.* 6*d.* per day. By sect. 8 of the Law of Distress Amendment Act, 1888, the Lord Chancellor may make rules "for regulating the fees, charges, and expenses in and incidental to distresses." By r. 15 of the Distress for Rent Rules, 1888, made by the Lord Chancellor under the above section, "no person shall be entitled to any fees, charges, or expenses for levying a distress, or for doing any act or thing in relation thereto, other than those specified in and authorised by the table in Appendix II. to these rules"; and by r. 16, where the rent due does not exceed 20*l.*, the fees, charges, and expenses specified in scale II. shall be allowed. Scale II. allows "for a man in possession, 4*s.* 6*d.* per day: to provide his own board in every case."

HELD—that the Lord Chancellor had power under sect. 8 of the Law of Distress Amendment Act, 1888, to make rules authorising a scale of fees, charges, and expenses which should supersede the scale in the schedule to the Distress (Costs) Act, 1817, and that therefore the charge of 4*s.* 6*d.* per day for a man in possession authorised by the scale where the rent due did not exceed £20 was not *ultra vires*.

WALKER v. RETTER, [1911] 1 K. B. 1103; [80 L. J. K. B. 623; 104 L. T. 821; 75 J. P. 331—Div. Ct.]

5. *Excessive Charges—Order for Treble Amount—Penalty or Civil Debt Distress (Costs) Act, 1817* (57 Geo. 3, c. 93), s. 2—*Summary Jurisdiction Act, 1884* (47 & 48 Vict. c. 43), ss. 4,

III. Procedure—Continued.

5; *Schedule*.]—An order under sect. 2 of the Distress (Costs) Act, 1817, for the recovery of treble the amount of excess charges taken on the levying of a distress is enforceable by imprisonment in default of sufficient distress in like manner as an order for the payment of a penalty.

R. v. DALY, *EX PARTE* NEWSON, 104 L. T. 892;
[75 J. P. 333—Div. Ct.]

(b) Possession.

See No. 4, *supra*.

(c) Rescue.

[No paragraphs in this vol. of the Digest.]

(d) Sale.

[No paragraphs in this vol. of the Digest.]

DISTRIBUTION.

See DESCENT AND DISTRIBUTION.

DISTRICT COUNCILS.

See LOCAL GOVERNMENT.

DISUSED BURIAL GROUND.

See BURIAL AND CREMATION.

DITCHES.

See HIGHWAYS; SEWERS AND DRAINS.

DIVIDEND WARRANT.

See COMPANIES.

DIVIDENDS.

See BANKRUPTCY; COMPANIES.

DIVORCE.

See HUSBAND AND WIFE.

DOCKS.

See RAILWAYS AND CANALS; SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

DOCTORS.

See MEDICINE AND PHARMACY.

DOGS.

See ANIMALS.

DOMESTIC ANIMALS.

See ANIMALS.

DOMICIL.

See BANKRUPTCY; CONFLICT OF LAWS.

DONATIO MORTIS CAUSA.

See GIFTS.

DOWER.

[No paragraphs in this vol. of the Digest.]

DRAINAGE.

See METROPOLIS; NUISANCE; PUBLIC HEALTH; SEWERS AND DRAINS.

DRAMATIC COPYRIGHT.

See COPYRIGHT AND LITERARY PROPERTY.

DRUGGISTS.

See MEDICINE AND PHARMACY.

DRUNKENNESS.

See CRIMINAL LAW AND PROCEDURE; INTOXICATING LIQUORS.

DURESS.

See CONTRACTS; EQUITY; WATERWORKS, No. 4.

DYING DECLARATIONS.

See CRIMINAL LAW AND PROCEDURE.

EASEMENTS AND PROFITS A PRENDRE.

I. IN GENERAL	COL. 183
[No paragraphs in this vol. of the Digest.]	
II. PARTICULAR EASEMENTS.	
(a) Rights of Way	183
(i.) <i>Abandonment</i>	183
[No paragraphs in this vol. of the Digest.]	
(ii.) <i>Conveyance</i>	183
(iii.) <i>Excessive User</i>	184
[No paragraphs in this vol. of the Digest.]	
(iv.) <i>Grant of Right</i>	184
(v.) <i>Prescription</i>	184
[No paragraphs in this vol. of the Digest.]	
(vi.) <i>Private Right of Way</i>	184
(vii.) <i>Way of Necessity</i>	184
(b) Rights of Water and Watercourses	184
(c) Right to Light	185
[No paragraphs in this vol. of the Digest.]	
(d) Right to Support	185
[No paragraphs in this vol. of the Digest.]	
(e) Various	185
[No paragraphs in this vol. of the Digest.]	

See also FISHERIES, Nos. 1, 3.

I. IN GENERAL.

[No paragraphs in this vol. of the Digest.]

II. PARTICULAR EASEMENTS.

(a) Rights of Way.

See also HIGHWAYS, No. 1.

(i.) *Abandonment.*

[No paragraphs in this vol. of the Digest.]

(ii.) *Conveyance.*

See also LANDLORD AND TENANT, No. 2.

1. *Reservation of Right of Way—Easement in futuro—Covenant to “Make and Provide” Crossing over Tramway—Time Indefinite—Interest in Land—Perpetuity—Personal Covenant—Implied Stipulation—Encumbrance.*—In 1889 the defendant conveyed to the plaintiff's predecessors in title a strip of land for a tramway, the deed containing a reservation by the vendors of the right to cross the line at two points to be selected by them, and a covenant by the purchasers to “make and provide” crossings at the points selected by the vendor on notice being given. In 1892 the defendants gave notice of one point selected, and from that date crossed the line there from time to time, but no crossing was

ever constructed. In 1910 the plaintiff obstructed the crossing, and sought to restrain the defendant from using it.

Held—that the reservation was void as breaking the rule against perpetuities, but that the covenant contained an implied personal obligation not to interfere with the defendant's crossing, which obligation became fixed and attached to the land as soon as the point was selected, and that the plaintiff had notice thereof, and was bound thereby.

SHARPE *v.* DURRANT, 55 Sol. Jo. 423—Warrington, J.

AFFIRMED ON APPEAL: see [1911] W. N. 158.

(iii.) *Excessive User.*

[No paragraphs in this vol. of the Digest.]

(iv.) *Grant of Right.*

See also LANDLORD AND TENANT, No. 2.

2. *Presumption of Lost Grant—Removal of Refuse by Local Authority.*—The plaintiff, the owner of two houses, had an easement of depositing refuse from them in a dust-bin on neighbouring land, A., belonging to the defendants. The local authority removed the refuse from the dust-bin for twenty years before 1902 by carrying it across A. and along a certain passage, B., over which the owner of A. had a right of way. In 1902 the refuse ceased to be taken along the passage B. The plaintiff now claimed a right of way across A. to the passage B. by presumption of a lost grant. There was no evidence of any permission having been given to use any way across A.

Held—that it was the duty of the defendants to have the refuse removed, that the local authority did not remove it as agents for the plaintiff, and that a lost grant could not be presumed.

FOSTER *v.* RICHMOND, 9 L. G. R. 70—Eady, J.

(v.) *Prescription.*

[No paragraphs in this vol. of the Digest.]

(vi.) *Private Right of Way.*

3. *Obstruction by Locking Gates—Offer to Provide Keys.*—It is an obstruction to a person's free right of way if another person locks gates across such way, and it is no answer to the complaint as to the obstruction to say that keys for the gates will be supplied.

GUESTS ESTATES, LD. *v.* MILNER'S SAFES, LD., [28 T. L. R. 59—Eady, J.]

(vii.) *Way of Necessity.*

See LANDLORD AND TENANT, No. 2.

(b) Rights of Water and Watercourses.

4. *Land Drainage—Negligence in Stopping up Watercourse and Substituting therefor a Pipe Drain of too Narrow Dimensions—Unity of Ownership—Requisition on Title—Effect of Reply to.*—The plaintiff was occupier of a farm from the house, premises and fields

II. Particular Easements—Continued.

whereof certain covered watercourses had run for a period of twenty years before action brought into an open watercourse, known as the Old Mill Brook, on adjoining land of the defendants. The plaintiff claimed that under the Prescription Act, 1832, or in the alternative by prescription from time immemorial, he was entitled as tenant of the farm under the Ecclesiastical Commissioners (the owners of the fee) to the continuance of an uninterrupted passage of water and drainage from the said farm into the Old Mill Brook. The defendants filled up the Old Mill Brook and substituted therefor a pipe drain, after which the plaintiff's farm was flooded and his crops were injured. He alleged that this injury was occasioned owing to the pipe drain having been so constructed that it could not carry away all the drainage. When the defendants purchased their land they received the following answer in reply to a requisition on title as to easements: "We do not know of any easements; but whatever there are they are reserved." The defendants pleaded (a) that the plaintiff was entitled to no easement, there having been unity of ownership and possession by the plaintiff's landlord of the land occupied by the plaintiff and defendants respectively, and also unity of tenancy by the plaintiff of his farm and the land of the defendants over which he claimed the easement before the tenancy and ownership were severed; (b) that the pipe was substituted for the open ditch, because the ditch had become choked up; (c) that the pipe drain was properly laid; and (d) that the flooding and injury to the plaintiff's land was caused by a stoppage in a pipe or watercourse on the plaintiff's land.

HELD, upon the facts—that the plaintiff's property had been injured by floods, and that the floods were caused by the negligence of the defendants.

HELD FURTHER—that although there had been unity of ownership and possession by the plaintiff's landlord of the land now occupied by the plaintiff and the defendants respectively, and also unity of tenancy by the plaintiff of his present farm and of the land of the defendants over which he claimed an easement of flow, all easements must be deemed to have been reserved.

**LONGTON v. COMMITTEE OF VISITORS OF WIN-
[WICK ASYLUM, 75 J. P. 348—Grantham, J.]**

(c) Right to Light.

[No paragraphs in this vol. of the Digest.]

(d) Right to Support.

[No paragraphs in this vol. of the Digest.]

(e) Various.

[No paragraphs in this vol. of the Digest.]

ECCLESIASTICAL LAW.

I. CHAPELS	COL. 186
[No paragraphs in this vol. of the Digest.]	
II. CHURCH OF ENGLAND.	
(a) Discipline and Ecclesiastical Offences	186
[No paragraphs in this vol. of the Digest.]	
(b) Ornaments and Erections in Churches	186
[No paragraphs in this vol. of the Digest.]	
IIA. ADVOWSONS	186
[No paragraphs in this vol. of the Digest.]	
III. CHURCHWARDENS	186
[No paragraphs in this vol. of the Digest.]	
IV. CLERGY	186
V. DILAPIDATIONS	186
[No paragraphs in this vol. of the Digest.]	
VI. ECCLESIASTICAL COURTS	187
VII. ENDOWMENTS	187
[No paragraphs in this vol. of the Digest.]	
VIII. FACULTIES	187
IX. FIRST FRUITS AND TENTHS	187
[No paragraphs in this vol. of the Digest.]	
X. GLEBE	187
[No paragraphs in this vol. of the Digest.]	
XI. TITHE	187
<i>See also WILLS, No. 40.</i>	

I. CHAPELS.

[No paragraphs in this vol. of the Digest.]

II. CHURCH OF ENGLAND.**(a) Discipline and Ecclesiastical Offences.**

[No paragraphs in this vol. of the Digest.]

(b) Ornaments and Erections in Churches.

[No paragraphs in this vol. of the Digest.]

IIA. ADVOWSONS.

[No paragraphs in this vol. of the Digest.]

III. CHURCHWARDENS.

[No paragraphs in this vol. of the Digest.]

IV. CLERGY.

1. Baptist Minister—Termination of Employment—Effect of Resignation as from a Future Date—Right to Withdraw Resignation.—A Baptist minister, who expresses his intention to resign his ministry on or before a certain date, at a formal meeting of the communicants of his church, does not thereby terminate his employment. If a Baptist minister does definitely resign his appointment, as from a future date, he may, before that date arrives, withdraw his resignation at a formal meeting of the communicants of the church, although the meeting is not such as would have power to appoint a new minister.

**NICKSON v. DOLPHIN, 56 Sol. Jo. 123—Warring-
[ton, J.]**

V. DILAPIDATIONS.

[No paragraphs in this vol. of the Digest.]

ECCLESIASTICAL CHARITY.

See CHARITIES.

VI. ECCLESIASTICAL COURTS.

See No. 2, *infra*.

VII. ENDOWMENTS.

[No paragraphs in this vol. of the Digest.]

VIII. FACULTIES.

2. *Application for Faculty to Build Public Elementary School on Consecrated Ground—"Ecclesiastical Purposes"*—*Education Act, 1902* (2 Edw. 7, c. 42), s. 7 (6).—In 1885 the church of Holy Apostles was erected at Charlton Kings, the cost of erection being entirely defrayed out of the benefactions of one Higgs. The church, together with the land surrounding it, was consecrated in the same year. The incumbent of the church applied to the Chancellor of the diocese of Gloucester for a faculty to authorise the erection on the consecrated ground of new public elementary schools by way of substitution or supplement for existing schools standing on unconsecrated ground, and the sale or gift of a strip of the consecrated land for the purpose of widening or straightening a certain road if it should at any time be required. The application was opposed by the trustees of the will of Mr. Higgs and by certain parishioners. The Chancellor held that no one of the purposes of the Education Act, 1902, could be described as an ecclesiastical purpose, although, having regard to sect. 7, sub-sect. 6, religious instruction was incidental to certain non-provided schools, and that a faculty could not be granted on appeal.

HELD—that the Court had jurisdiction to grant a faculty to authorise the erection on consecrated ground of the proposed school which was to be governed by a trust deed so framed as to secure that the religious instruction given in the school should be in accordance with the principles of the Church of England.

In re Bettison ((1874) L. R. 4 A. & E. 294) followed.

Decision of Chancellor of Diocese of Gloucester (*sub nom.* VICAR OF HOLY APOSTLES, CHARLTON KINGS v. HIGGS, 75 J. P. 543) reversed.

CORKE v. RAINGER, CORKE v. HIGGS, 28 [T. L. R. 130—Ct. of Arches.

IX. FIRST FRUITS AND TENTHS.

[No paragraphs in this vol. of the Digest.]

X. GLEBE.

[No paragraphs in this vol. of the Digest.]

XI. TITHE.

3. *Compulsory Redemption—Practice—Costs—Payment into Court—Application for Investment—Extraordinary Tithe Redemption Act, 1886* (49 & 50 Vict. c. 54), s. 5 (4).—The Dean and Chapter of Canterbury Cathedral were the owners of extraordinary tithe charged on the lands of W. W. applied to the Board of Agriculture for compulsory redemption, and under their direction paid the assessed amount of redemption money into Court. The Dean and Chapter applied by summons for investment of the redemption money. The Extraordinary Tithe

Redemption Act provides that the money may be dealt with as if it were money paid in under the Tithe Commutation Acts. None of these Acts contain any direction as to costs.

HELD—that the Court had jurisdiction to deal with the costs, and they must be paid by W., the landowner seeking compulsory redemption.

IN RE GRAHAM-WIGAN, [1911] 2 Ch. 438; [105 L. T. 405—Neville, J.

EDUCATION.

	COL.
I. MAINTENANCE OF SCHOOLS	188
II. ENDOWED SCHOOLS ACTS	189
III. RELIGIOUS INSTRUCTION	189
IV. SCHOOL ATTENDANCE AND CHILD LABOUR	189
V. TEACHERS AND OFFICERS.	
(a) Teachers	191
(b) Officers	192
[No paragraphs in this vol. of the Digest.]	
VI. MISCELLANEOUS	192
[No paragraphs in this vol. of the Digest.]	

See also CHARITIES, No. 2; ECCLESIASTICAL LAW, No. 2; NEGLIGENCE, Nos. 2, 3, 4.

I. MAINTENANCE OF SCHOOLS.

1. *Public Elementary School—Provided and Non-provided Schools—Local Education Authority—Teachers' Salaries—Right to Differentiate—Failure to Maintain and Keep Efficient—Board of Education—Decision of Board—Education Act, 1902* (2 Edw. 7, c. 42), ss. 7 (3), 16. —The duty of maintaining and keeping efficient a non-provided school imposed upon a local education authority by sect. 7 of the Education Act, 1902, is a matter which can be a "question" between the authority and the school managers so as to come within the jurisdiction of the Board of Education.

A local education authority refused to pay salaries to teachers in a non-provided school at the same rate as it paid the teachers in provided schools. The managers of the non-provided schools complained, and the Board of Education directed an inquiry, the result of which was a report that the local education authority had failed to maintain the school and keep it efficient. The "questions" required by sect. 7, sub-sect. 3, to be determined by the Board of Education were: "(1.) Whether the local education authority have in fixing and paying the salaries of the teachers fulfilled their duty under sect. 7, sub-sect. 1, of the Act; (2.) Whether the salaries inserted in the teachers' present agreements are reasonable in amount and ought to be paid by the authority, or what salaries the authority ought to pay." The Board purported to give its decision in a document which failed to deal with the matter in issue.

HELD—that inasmuch as the Board had not determined the questions, the decision must be

I. Maintenance of Schools—Continued.

quashed by *certiorari*, and a *mandamus* must issue commanding the Board to determine the question.

The right of a local education authority to differentiate between schools in regard to the scale of salaries or the standard of efficiency, in the absence of special circumstances appropriate to the differentiation, discussed.

Decision of C. A. (*sub nom. R. v. Board of Education, Ex Parte The Managers of Oxford Street School, Swansea*, [1910] 2 K. B. 165; 79 L. J. K. B. 692; 102 L. T. 578; 74 J. P. 259; 26 T. L. R. 422; 8 L. G. R. 549) affirmed.

BOARD OF EDUCATION *v.* RICE, [1911] A. C. [179; 80 L. J. K. B. 796; 104 L. T. 689; 75 J. P. 393; 27 T. L. R. 378; 55 Sol. Jo. 440; 9 L. G. R. 652—H. L.

2. *Non-provided School—Management—Appointment of Caretaker and Cleaner—Education Act, 1902* (2 Edw. 7, c. 42), s. 7.—The education authority, and not the managers of a non-provided school, have the right to appoint the caretaker and cleaner of such a school. The managers have the duty to see that the school is kept clean and properly cared for, but the primary duty is on the education authority, the managers' duty arising by way of supplement and assistance to that authority.

Decision of Hamilton, J. ([1911] 1 K. B. 222; 80 L. J. K. B. 380; 104 L. T. 36; 75 J. P. 33; 27 T. L. R. 64; 8 L. G. R. 1059) reversed (Vaughan Williams, L.J., dissenting).

GILLOW *v.* DURHAM COUNTY COUNCIL, [1911] 2 K. B. 1074; 81 L. J. K. B. 1; 105 L. T. 535; 75 J. P. 561; 27 T. L. R. 576; 55 Sol. Jo. 725; 9 L. G. R. 1112—C. A.

II. ENDOWED SCHOOLS ACTS.

3. *Scheme—Power of Headmaster to Expel Pupil—Expulsion of Pupil—Action by Parent against Headmaster—Endowed Schools Act, 1869* (32 & 33 Vict. c. 56), s. 45.—A scheme framed under the Endowed Schools Act, 1869, gave the headmaster of a school the power of expelling boys for any adequate cause to be judged by him. A boy having been expelled from the school by the headmaster for what the latter considered to be an adequate cause the boy's father sued the headmaster, claiming damages for breach of implied contract.

HELD—that the action failed, inasmuch as the plaintiff was bound by the scheme, and the headmaster had *bonâ fide* exercised the power of expulsion given thereby.

WOOD *v.* PRESTWICH, 104 L. T. 388; 75 J. P. [285; 27 T. L. R. 268; 55 Sol. Jo. 292—Div. Ct.

III. RELIGIOUS INSTRUCTION.

See ECCLESIASTICAL LAW. No. 2.

IV. SCHOOL ATTENDANCE AND CHILD LABOUR.

4. *Bye-law as to School Attendance—Child "Beneficially Employed"—Onus of Proof.*—

A bye-law made by an education authority provided that the parent of every child of not less than five nor more than fourteen years of age should cause such child to attend school unless there was a reasonable excuse for non-attendance. The bye-law also provided that "a child between thirteen and fourteen years of age shown to the satisfaction of the local authority to be beneficially employed shall not be required to attend school if such child has obtained a certificate" of having made a certain number of attendances. On a prosecution by the education authority of a parent for not causing a child of thirteen to attend school—

HELD—that under the bye-law, the onus of proving that the child was exempt from the necessity of attendance, upon the ground that she was beneficially employed, rested upon the parent; that the justices were not intended to be the judges of what was beneficial employment; and that in deciding that nursing was a beneficial employment, they were usurping the function of the education authority.

HOLLOWAY *v.* CROW, [1911] 1 K. B. 636; 80 [L. J. K. B. 153; 104 L. T. 73; 75 J. P. 77; 27 T. L. R. 140; 9 L. G. R. 89—Div. Ct.

5. *Reasonable Excuse for Non-attendance—Efficient Instruction Given in other Manner.*—A bye-law made by an education authority provided that the parent of every child of not less than five years or more than fourteen should cause such child to attend school unless there was a reasonable excuse for non-attendance. It also provided that the following reason, *inter alia*, should be a "reasonable excuse"—viz., that the child was under efficient instruction in some other manner.

HELD—that justices had jurisdiction to decide that the fact that efficient education, so far as a particular child was concerned, was being given in some other manner than in a public elementary school was a reasonable excuse within the meaning of the bye-law, without deciding that such education was as efficient as that which the child would have received at a public elementary school.

BEVAN *v.* SHEARS, [1911] 2 K. B. 936; 80 [L. J. K. B. 1325; 75 J. P. 478; 27 T. L. R. 516; 9 L. G. R. 1066—Div. Ct.

6. *Attendance Order—Neglect to Provide Efficient Instruction—Evidence—Elementary—Education Act, 1876* (39 & 40 Vict. c. 79), s. 11.—The appellant was summoned for neglecting to provide efficient elementary instruction for a child. Evidence was given that the child was attending a private school where there was only one room which was contiguous to a factory, and that the general equipment was not efficient. It was also proved that the child was not being provided with efficient elementary instruction at the school in question. The magistrate found that the appellant, as the parent of the child, had habitually and without reasonable excuse neglected to provide efficient elementary instruction, and he made an order that the child should attend another school.

IV. School Attendance and Child Labour—*Continued.*

HELD—that even assuming that the evidence as to the building and equipment of the school which the child was attending was irrelevant, the magistrate had applied his mind to the right point and had found as a fact that the child was not being provided with efficient elementary instruction, and therefore that he was justified in making the order in question.

SHIERS v. STEVENSON, 105 L. T. 522; 75 J. P. [441; 9 L. G. R. 1137—Div. Ct.

7. Attendance Order—Non-compliance—Summons Adjourned for Six Months—Different Justices—Re-hearing—Evidence that Education of Children Insufficient when Summons Finally Heard—Admissibility—Elementary Education Acts, 1873 (36 & 37 Vict. c. 86), s. 24; and 1876 (39 & 40 Vict. c. 79), s. 12.]—The parent of two children was summoned under sect. 12 of the Elementary Education Act, 1876, for non-compliance with an attendance order. The summonses were first heard on September 10th, 1910, and were then adjourned for six months. On March 11th, 1911, the parent was summoned under sect. 24 of the Elementary Education Act, 1873, to produce the children, but he did not do so, and the summonses were further adjourned until March 25th. A week before that date the children were examined by the Director of Education, and were found by him to have been inefficiently educated. The evidence of this examination was admitted by the justices at the hearing on March 25th, on the ground that as the education of the children was defective at that date, the inference could be drawn that it was defective when the summons was issued. The justices convicted the parent.

HELD—(1) that the evidence as to the result of the examination of the children in March, 1911, was relevant, and in the circumstances was properly admitted; and (2) that although different justices were sitting on the various days when the summonses were heard, the proceedings were regular, inasmuch as there was a complete re-hearing on each occasion.

R. v. WALTON, EX PARTE DUTTON, 75 J. P. 558; [27 T. L. R. 569; 9 L. G. R. 1231—Div. Ct.

V. TEACHERS AND OFFICERS.

(a) Teachers.

8. Headmistress—Right to Salary when "Absent through Illness"—Absence from School during Pregnancy.]—The plaintiff, a married woman, was the headmistress of one of the defendants' schools. By the terms of her employment she was entitled in case of absence through illness to full pay for a month, after which time the defendants were entitled to take into consideration the circumstances of the case as to whether she was entitled to anything further.

HELD—(1) that "absence through illness" was not confined to a period of absence during actual illness but included the period

of convalescence and also absence occasioned by approaching illness; but (2) that the absence of the plaintiff for a period of three months before her child was born because in the defendants' view it was not desirable that the elder school children should see the plaintiff in her then condition was not absence through illness, and as such absence was due to the defendants' request they were liable for her salary during that period.

DAVIES v. EBBW VALE URBAN DISTRICT COUNCIL, 75 J. P. 533; 27 T. L. R. 543; 9 L. G. R. 1226—Channell, J.

9. Resignation—Notice—Salary during Vacation.]—The plaintiff was engaged as a teacher by the education committee of the defendant corporation at a yearly salary payable monthly subject to three months' notice on either side. Being asked to resign the plaintiff gave notice of resignation in March, 1909, adding that the notice was to take effect on August 31st, 1909. The education committee thereupon gave the plaintiff a counter-notice to terminate the engagement on July 31st, 1909, when the holidays began.

HELD—that the plaintiff was not entitled to any salary for the month ending August 31st, 1909.

LIANN v. PLYMOUTH CORPORATION, 9 L. G. R. [61—Div. Ct.

(b) Officers.

[No paragraphs in this vol. of the Digest.]

VI. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

EDUCATION ACTS.

See CHARITIES; EDUCATION.

EJECTMENT.

See LANDLORD AND TENANT.

ELECTION.

See WILLS.

ELECTIONS.

	COL.
I. DISQUALIFICATION	193
[No paragraphs in this vol. of the Digest.]	
II. THE ELECTION	193
[No paragraphs in this vol. of the Digest.]	
III. ILLEGAL PRACTICES	193
[No paragraphs in this vol. of the Digest.]	

Elections—Continued.

COL.

IV. LODGER VOTES	193
V. PETITION	194
[No paragraphs in this vol. of the Digest.]	
VI. OCCUPATION VOTERS	194
VII. OWNERSHIP VOTERS	197
VIII. REVISING BARRISTERS	197
IX. SERVICE FRANCHISE	198
X. MISCELLANEOUS	198
[No paragraphs in this vol. of the Digest.]	

See also LOCAL GOVERNMENT, Nos. 12, 17.

I. DISQUALIFICATION.

[No paragraphs in this vol. of the Digest.]

II. THE ELECTION.

[No paragraphs in this vol. of the Digest.]

III. ILLEGAL PRACTICES.

[No paragraphs in this vol. of the Digest.]

IV. LODGER VOTES.

1. *Furnished Bedroom at Five Shillings a Week—Rebutting Declaration—Rateable Value of House Under Fourteen Pounds—Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 23.]—The appellant, in due form and with the proper declaration, claimed to have his name inserted in the list of lodger voters. The declaration stated that the appellant paid 5s. a week for a furnished bedroom. The rateable value of the house in which the appellant lodged was less than £14 per annum. The appellant did not appear at the revision court to support his claim although notice had been served that his claim would be opposed. The revising barrister held that the *prima facie* case established by the declaration attached to the claim had been rebutted, and disallowed the claim.

HELD—that the revising barrister was entitled to weigh the *prima facie* case made by the declaration against the rebutting case furnished by the rate-book, and in the absence of further evidence to hold that the claim was not established.

AINSWORTH v. CLERK TO CHESHIRE COUNTY COUNCIL, 104 L. T. 62; 75 J. P. 116; 27 T. L. R. 82; 9 L. G. R. 21; 2 Smith, Reg. 248—Div. Ct.

2. *Occupation as Sole Tenant—Daughters Sleeping in One of Two Bedrooms—Wife and Children—Representation of the People Act, 1867* (30 & 31 Vict. c. 102), s. 4.]—These were two cases stated by a revising barrister. In S.'s case, which was a claim to be inserted in a list of lodgers, it appeared that in one of the two bedrooms occupied by S., in respect of which he made his claim, his three daughters were accustomed to sleep. The barrister held that S. had not occupied separately and as sole tenant that bedroom, and as he found that the bedroom occupied by S. was by itself of insufficient value, he disallowed the claim.

In G.'s case, which was also a lodger claim,

Y.D.

it appeared that in the bedroom occupied by G., in respect of which he made his claim, there slept in one bed G. and his wife, and in another bed G.'s two children. The barrister held that G. had not occupied the bedroom separately and as sole tenant.

HELD—that, in each case, the claimant had occupied separately and as sole tenant the room or rooms and was entitled to be on the lodgers' list.

SEARLE v. CLERK OF STAFFORDSHIRE COUNTY COUNCIL; GOUGH v. CLERK OF STAFFORDSHIRE COUNTY COUNCIL, 104 L. T. 61; 75 J. P. 116; 9 L. G. R. 24; 2 Smith, Reg. 244—Div. Ct.

3. *Value of Lodgings—Rateable Value of Whole House—Evidence—Representation of the People Act, 1867* (30 & 31 Vict. c. 102) s. 4.]—On the hearing of a claim to a vote in respect of the lodger franchise, the fact that the rateable value of the house, of which the lodgings form part, is less than £8 a year, is admissible but not conclusive evidence upon the question of the sufficiency or insufficiency of the value of the lodgings to support the claim.

R. v. ALLEN, EX PARTE GRIFFITHS, 74 J. P. [454; 8 L. G. R. 979; 2 Smith, Reg. 227—Div. Ct.

4. *Occupancy of Qualifying Premises enjoyed as Part Remuneration for Services—Representation of the People Acts, 1868* (31 & 32 Vict. c. 48), s. 4, and 1884 (48 & 49 Vict. c. 3), s. 2.]—A Roman Catholic priest claimed the lodger franchise in respect of occupancy of rooms of the requisite annual value in the rectory of the priest to whom he was appointed assistant. The claimant paid no money rent for the rooms, but was entitled, as part of his official salary, to board and lodging in the rectory if accommodation was there available.

HELD—that the claimant was entitled to be enrolled as a lodger.

DOYLE v. CRAIG, [1911] S. C. 493; 48 Sc. L. R. [109—Ct. of Sess.

V. PETITION.

[No paragraphs in this vol. of the Digest.]

VI. OCCUPATION VOTERS.

5. *Occupier of "Dwelling-house"—Separate Dwellings—Landlord Resident in House—Landlord Rated for whole House—Occupier not Separately Rated—Objection—Prima Facie Proof—Rebuttal—Representation of the People Act, 1867* (30 & 31 Vict. c. 102), ss. 3, 7—*Poor Law Assessment and Collection Act, 1869* (32 & 33 Vict. c. 41), ss. 3, 4, 19—*Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), ss. 14, 28 (10), (11).]—A person objecting to the name of a voter in a list of electors, as the occupier of a dwelling-house, having given *prima facie* proof of the ground of objection within the meaning of sect. 28, sub-sect. 10, of the Parliamentary and Municipal Registration Act, 1878, by proving (1) that the dwelling-house formed part of a building

VI. Occupation Voters—Continued.

which would itself be ordinarily described as a dwelling-house; (2) that the landlord resided in the building; and (3) that the landlord was rated for the whole of the building, the voter proved that no services were rendered by the landlord, that the landlord claimed no right and never in fact exercised any right of control over the dwelling-house, and that at the time of letting the dwelling-house no terms were specifically mentioned either by the landlord or the voter except as to the number and situation of the rooms constituting the dwelling-house, the amount of the rent, and the times at which it was payable. The premises occupied by the voter did not come within the provisions of sects. 3 or 4 of the Poor Rate Assessment and Collection Act, 1869.

The Div. Ct. held that, in the absence of any positive evidence of the landlord giving up control of the dwelling-house, the voter had not proved himself entitled to have his name inserted in the list within sub-sect. 11 of sect. 28 of the Act of 1878. On appeal:—

HELD—that the voter was not entitled to have his name inserted in the list, upon the ground that he had not been rated or paid rates in respect of the premises occupied by him, and the owner could not in such a case be legally rated instead of the occupier.

Decision of Div. Ct. (103 L. T. 668; 75 J. P. 113; 27 T. L. R. 79; 9 L. G. R. 27) affirmed on different grounds.

KENT v. FITTALL (No. 4), [1911] 2 K. B. 1102; [81 L. J. K. B. 82; 105 L. T. 422; 75 J. P. 378; 27 T. L. R. 564; 55 Sol. Jo. 687; 9 L. G. R. 999; 2 Smith, Reg. 279—C. A.

6. *Objection—Primâ facie proof—Evidence—Rebuttal—Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 28 (9), (10), (11).—At the court of a revising barrister an objector gave *primâ facie* proof of the three facts, as set out in *Kent v. Fittall* (No. 4) (*supra*). The name of the same person had, in the previous year, appeared in the similar list for the same qualifying property, the same objector had then made the same objection and proved the same facts, the person objected to had given evidence and been cross-examined, and the same revising barrister had retained his name in the list. The revising barrister refused to require the person objected to to adduce evidence or to be cross-examined, and held that the objection failed, upon the ground that in the circumstances *primâ facie* proof of the objection had not been given.

HELD—that the decision of the revising barrister was wrong, inasmuch as *primâ facie* proof of the objection had been given and there was no evidence before him to rebut it.

Kent v. Fittall (No. 4) (*supra*) applied.

KENT v. FITTALL (No. 5), 105 L. T. 428; [9 L. G. R. 1186—C. A.

7. *Objection to Voter—Hearsay Evidence in Support of Claim—Admissibility—Appeal—Parliamentary Voters Registration Act, 1843* (6 & 7

Vict. c. 18), s. 65—*Parliamentary and Municipal Registration Act, 1878* (41 & 42 Vict. c. 26), s. 28.]—Objection was taken to the retention of a person's name on the occupation list on the ground that the apartments occupied by him were not occupied free of control of his landlord and were not separately rated or rateable; and *primâ facie* proof of the objection was given. The person objected to did not appear in support of his claim to be on the register, but a party agent who was in court stated that he had authority to appear on his behalf. The agent did not call the person objected to or his landlady to rebut the objection, but relied on the evidence offered by the town clerk. The revising barrister examined the person employed by the town clerk, who was one of a staff of canvassers, and he produced his canvass-book containing his notes made at the time, and, reading therefrom, he deposed that he had been expressly informed by the landlady that the premises occupied by the person objected to were let to him unfurnished, that he had separate and exclusive occupation, and that she performed no services for him and exercised no control over the premises. On this evidence, which was uncontradicted, the revising barrister held that the *primâ facie* evidence was rebutted, and he accordingly retained the name of the person objected to on the list of voters.

HELD—(1) that, as it was clear that the barrister could not have purported to admit this evidence as being legally admissible, and as his decision was one of law, or of mixed fact and law, an appeal lay to the High Court, notwithstanding sect. 65 of the Parliamentary Registration Act, 1843; and (2) that there was no sufficient or proper evidence to establish the relinquishment by the landlady of the right to control, and therefore the objection had not been rebutted.

ASTELL v. BARRETT, 103 L. T. 905; 75 J. P. [225; 27 T. L. R. 205; 55 Sol. Jo. 237; 9 L. G. R. 253; 2 Smith, Reg. 256—Div. Ct.

8. *Premises Separately Rated—Landlord Paying Rates—Right of Occupier to Vote—Representation of the People Act, 1867* (30 & 31 Vict. c. 102), ss. 3, 7.]—During the qualifying period the appellant was the inhabitant occupier as tenant of the whole of premises in a parish in a borough. The premises were separately rated and were of the yearly value of £12. His name appeared in the rate-book. The landlord did not reside on the premises, but he, by arrangement with the local authority and the appellant, paid the rates assessed on the appellant as occupier, the overseers, however, reserving their rights against the appellant in case the landlord failed to pay the poor rate.

HELD—that the appellant was the rated occupier of the qualifying premises, and as he had effectively paid the rates he was entitled to have his name inserted in Division I. of the Occupiers' List.

Kent v. Fittall (No. 4) (*supra*) distinguished.

SMITH v. NEWMAN, 105 L. T. 631; 28 T. L. R. [19; 56 Sol. Jo. 16; 9 L. G. R. 1254—Div. Ct.

VI. Occupation Voters—Continued.

9. *Inhabitant Householder—Occupation of Portion of House—Subsequent Occupation of Entire House—Succession.*—J.'s name appeared on the list of voters as "inhabitant householder" of part of a house; J. had during portion of the qualifying period in fact occupied part of the house, a sub-tenant of J.'s occupying the remaining part; but on the determination of the sub-tenancy J. went into possession of and occupied the entire house during the remainder of the qualifying period.

HELD (Lord O'Brien, L.C.J., dissenting)—that the claimant was entitled to a vote, and that it was unnecessary that the qualifying premises should have been set out in the list of voters as a house in succession from part to the whole of the premises.

JACKSON v. MAHON, [1911] 2 I. R. 318—C. A., [Ireland.]

VII. OWNERSHIP VOTERS.

10. *Freehold House in City—Two-storey Building—Lower Storey Let to Tenant—Upper Storey Occupied by Owner—Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 24.*—The appellant, D., was the freeholder of a two-storey building in a city. Each storey formed a separate dwelling-house entered by a separate outer door. The appellant occupied the upper storey, while the lower storey was let to a tenant. The appellant and the tenant of the lower storey were each entitled to be, and were in fact, registered as voters in respect of their occupation on the list of occupation voters for the city. The appellant claimed to have his name inserted in the list of ownership voters for the county in respect of such freehold house.

In a second case, that of the appellant P., the facts were similar to those in D.'s case, except that the lower storey was unoccupied.

HELD—that, in either case, the appellant's claim was not barred by sect. 24 of the Representation of the People Act, 1832, and that he was entitled to have his name inserted in the list of ownership voters for the county.

DOUGLAS v. SANDERSON; POTTS v. SANDERSON, [1911] 1 K. B. 166; 80 L. J. K. B. 294; 103 L. T. 841; 75 J. P. 108; 27 T. L. R. 81; 55 Sol. Jo. 94; 9 L. G. R. 1; 2 Smith, Reg. 227—Div. Ct.

VIII. REVISING BARRISTER.

11. *Power of Revising Barrister to Amend List—Bonâ fide Mistake not Tending to Mislead.*—Where the name of a voter, otherwise duly qualified, appeared in the supplemental list of inhabitant householders for the registration unit of A, polling district of B, and the qualifying premises were situate in the same unit, polling district of C, and the revising barrister, being satisfied that the error arose from a *bonâ fide* mistake and that no person had been thereby misled or prejudiced, transferred the name from the list for B to the list for C.

HELD—that he had power to make such amendment.

GREGG v. KENNEDY, [1911] 2 I. R. 196—C. A., [Ireland.]

IX. SERVICE FRANCHISE.

12. *Rates paid by Employer—"Another Person"—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), ss. 3, 7—Poor Rate Assessment Act, 1869 (32 & 33 Vict. c. 41), ss. 7, 19—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 9.*—The appellant claimed to have his name inserted on Division II. of the Occupiers' List in virtue of his occupation of a house as servant of his employer and in respect of which house the employer was rated and paid the rates. Apart from the effect of this fact it was admitted that the claim was good.

HELD—that the claimant came within the terms of sects. 3 and 9 (8) of the Representation of the People Act, 1884, and was to be deemed to be the occupier of, and was to be deemed to be rated in respect of, the house in question; and therefore that the claim was good.

CHESTERTON v. GARDOM, [1911] W. N. 227; 28 [T. L. R. 55; 56 Sol. Jo. 92; 9 L. G. R. 1274—Div. Ct.]

13. *"Dwelling-house is not Inhabited by any Person under whom such Man Serves"—Representation of the People Act, 1884 (48 Vict. c. 3), s. 3.*—An attendant in a certain institution occupied as part of his emoluments a separate bedroom in a building of the institution known as the "First House," and in respect thereof claimed to be enrolled in the register of voters. The sole power of appointment and dismissal of attendants in the institution was held by a doctor, who was chief medical superintendent thereof, and who did not reside in the "First House." The claimant and other attendants were bound to obey the orders of an assistant medical superintendent who resided in that building, and of the head attendant who did not reside therein; both of these were entitled to effect changes in the rooms of ordinary attendants, but the latter was subordinate to the former, and both were subordinate to the chief medical superintendent, to whom they had to report the matter if they had occasion to suspend an ordinary attendant, as they were entitled to do. During the chief medical superintendent's absence, on holiday or otherwise, his powers of control in the "First House" were delegated by him to the medical superintendent who resided there, and who was appointed by the governing body of the institution.

HELD—that the "First House" was not "inhabited by any person under whom" the claimant served in the sense of sect. 3 of the Representation of the People Act, 1884, and that accordingly he was entitled to be enrolled in the register of voters.

SHORTT v. WRIGHT, 48 Sc. L. R. 123—Reg. App. [Ct., Scotland.]

X. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

ELECTRIC LIGHTING AND POWER.

I. CONTRACT FOR SUPPLY	COL. 199
II. GENERALLY	199

I. CONTRACT FOR SUPPLY.

1. *"Supply" of Electricity—Municipal Corporation—Supply of Fittings and Appliances—Ultra vires—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 10.*—Under sect. 10 of the Electric Lighting Act, 1882, a local authority which is authorised to supply electricity has no power to supply fittings and appliances for use by consumers. The "supply" of electricity under the section is completed at the consumer's terminals.

ATTORNEY-GENERAL *v.* LEICESTER CORPORATION, [1910] 2 Ch. 359; 80 L. J. Ch. 21; 103 L. T. 214; 74 J. P. 385; 26 T. L. R. 568; 9 L. G. R. 185—Neville, J.

2. *Supply of Energy—Tramways—Agreement—Construction.*—In 1899 the urban district council of W. were authorised to supply electricity within their district. In 1900 they agreed with the plaintiff company that for ten years the company should take over their obligations and liabilities relating to the supply of electrical energy within the district. In 1902 the corporation of N. agreed with the W. urban district council to take the electrical energy required for working tramways in W. from the plaintiff company. On March 23rd, 1903, the W. urban district council assigned to the plaintiff company the undertaking of the council under the Order, and all rights, powers, privileges, and liabilities, duties, and obligations under the Order with a power of repurchase at the expiration of forty-two years or in the event of the company going into liquidation. The boundaries of N. were altered so as to include the W. district, and the N. corporation said that after the expiration of the ten years they were not bound to get their supply of electrical energy from the plaintiff company for tramways in the W. district.

HELD—that the corporation were still bound to take from the plaintiff company the electrical energy required for tramways in the W. district.

NEWCASTLE-UPON-TYNE ELECTRIC SUPPLY CO., [LD. *v.* NEWCASTLE-UPON-TYNE CORPORATION, 75 J. P. 97; 9 L. G. R. 161—Eady, J.

II. GENERALLY.

3. *Breaking up Street—Street not Repairable by Local Authority—Ultra vires—Trespass—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 12, 13—Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), Sched., s. 12 (2).*—Under sects. 6 and 7 of the Gasworks Clauses Act, 1847, as adapted to electric lighting undertakings by the Electric Lighting Act, 1882, the undertakers are empowered to break up streets, subject to

certain restrictions. By sect. 13 of the Act of 1882 (which is substantially repeated in sect. 12, subsect. 2, of the schedule to the Electric Lighting (Clauses) Act, 1899), nothing in that Act or in any Act incorporated therewith shall authorise the undertakers to break up any street which is not repairable by the local authority without the consent of the person by whom such street is repairable or the written consent of the Board of Trade to be given after notice to such person and after an opportunity has been given to him to state his objections thereto.

HELD (Kennedy L.J. dissenting)—that, where there was no person by whom the street was repairable, the section operated as an absolute prohibition against the breaking up of the street by the undertakers.

HELD, therefore, that, where a strip of land adjoining a street repairable by the local authority had been dedicated to the public by the owner and had become part of the street, but was not repairable either by the local authority or by the owner or by any other person, the local authority, as undertakers for the supply of electric light in their district, had no power to break up that portion of the street.

Decision of Warrington, J. ([1911] W. N. 66; 104 L. T. 335; 55 Sol. Jo. 347) reversed.

ANDREWS *v.* ABERTILLERY URBAN DISTRICT [COUNCIL, [1911] 2 Ch. 398; 80 L. J. Ch. 724; 105 L. T. 81; 75 J. P. 449; 9 L. G. R. 1009—C. A.

EMBEZZLEMENT.

See CRIMINAL LAW AND PROCEDURE.

EMBLEMENTS.

See AGRICULTURE; LANDLORD AND TENANT; REAL PROPERTY.

EMIGRATION.

See SHIPPING AND NAVIGATION.

EMPLOYERS' LIABILITY.

See MASTER AND SERVANT.

ENDOWMENT.

See CHARITIES; ECCLESIASTICAL LAW.

ENGINEERS AND ENGINEERING CONTRACTS.

See BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

EQUITABLE ASSIGNMENT.

See CHOSSES IN ACTION; MORTGAGES.

EQUITY.

See also GIFTS, No. I.

1. *Undue Influence—Parent and Child—Mortgage by Unmarried Daughter to secure Parent's Debt—Presumption of Parental Influence—Onus of Proof.*—Transactions in the nature of bounty from child to parent are in equity always regarded with the greatest jealousy when taking place before the child is completely emancipated from the parental influence, and this principle is not confined to gifts or donations properly so called, but extends to other benefits; for example, to a security executed in favour of the parent's creditor. In the case of a daughter, who, having no means of subsistence of her own, continues, after coming of age, to live under her father's roof, the parental influence almost necessarily continues, and the mere fact that she has for some years been of full age does not put an end to the presumption that she is still acting under that influence. Where, therefore, the parent borrows money upon the security of a document executed by an unmarried daughter living under his roof it is incumbent upon the lender to ascertain and assure himself not only that she understood what she was doing, but also that she was not acting under parental influence.

LONDON AND WESTMINSTER LOAN AND DISCOUNT CO., LD. *v.* BILTON, 27 T. L. R. 184—Joyce, J.

2. *Conversion—Order for Sale of Real Estate.*—An absolute order for sale made within the jurisdiction of the Court in an administration action operates as a conversion from the date of the order.

Arnold v. Dixon ((1874) L. R. 19 Eq. 113) and *Hyett v. Mekin* ((1884) 25 Ch. D. 735) approved.

FAUNTLEROY v. BEEBE, [1911] 2 Ch. 257; [80 L. J. Ch. 654; 104 L. T. 704; 55 Sol. Jo. 497—C. A.

ESTATE AGENT.

See AGENCY; AUCTIONS AND AUCTIONEERS; SALE OF LAND; VALUERS AND APPRAISERS.

ESTATE DUTY.

See DEATH DUTIES.

ESTATE TAIL.

See REAL PROPERTY.

ESTOPPEL.

See also CHARITIES, No. 9; COMPANIES, No. 52; CONTRACT, No. 3; INSURANCE, No. 14; LANDLORD AND TENANT, No. 2; MAGISTRATES, No. 16.

1. *Settlement—Action for Administration—Compromise—Order of Court—Subsequent Proceedings to set aside Appointment.*—In an action by the mortgagee of a life interest under a settlement against the trustees for administration, a compromise was effected and confirmed by the Court, all parties interested under the settlement being parties thereto. Subsequently proceedings were commenced by C. and H., who were parties to the compromise in the previous action, against the P. Company, who were also parties to the compromise, to set aside certain appointments made under a power in the settlement before the compromise.

HELD—that the plaintiffs were not debarred from raising the question of the validity of the appointments on the ground that they had been parties to the compromise in the previous action, as this issue had not been previously raised.

Decision of Neville, J. ([1910] W. N. 163; 79 L. J. Ch. 640; 103 L. T. 131) affirmed.

CLOUTTE v. STOREY, [1911] 1 Ch. 18; 80 L. J. (Ch. 193; 103 L. T. 617—C. A.

2. *Signature to Document obtained by Fraud—Document signed in Ignorance of Contents—Guarantee—Defence of Non est factum—Negligence—Proximate Cause of Loss.*—The defendant signed a document, which purported to be a continuing guarantee by him, up to a certain amount, of the payment by R. of any sum which might at any time thereafter be or become due from R. to the plaintiffs, a banking company, on the general balance of his banking account with them. In fact the defendant had been induced by the fraud of R. to sign the document, without reading it, and not knowing that it was a guarantee, but supposing it to be a document of a different character. Subsequently to the signature of the document by the defendant, R. forged the signature of an attesting witness to it, and handed it to the plaintiffs. The jury, in answer to a question put to them by the judge, found that the defendant was negligent in signing the document.

HELD—that in an action on the supposed guarantee the defendant was not estopped from denying that he had contracted to guarantee the debt of R., inasmuch as he was under no duty to

Estoppel — *Continued.*

the plaintiffs in the matter, and the proximate cause of the plaintiffs' loss was the fraudulent action of R. and not the defendant's supposed negligence.

Foster v. Mackinnon (1869) L. R. 4 (C. P. 704) discussed.

Decision of Pickford, J., affirmed.

CARLISLE AND CUMBERLAND BANKING CO. v. [BRAGG, [1911] 1 K. B. 489; 80 L. J. K. B. 472; 104 L. T. 121—C. A.

3. Claim for Rent under Agreement—Specially Indorsed Writ — Admission by Defendant — Claim for Further Rents under Agreement— Defence of no Consideration.—Where a defendant, when sued under Ord. 14 by a specially indorsed writ for the amount of certain rents due to the plaintiff from the defendant under an agreement, has filed an affidavit admitting that he owes money for rents due under the agreement, he is, if sued subsequently for further rents under the same agreement, estopped from setting up the defence that there was no consideration for the agreement, and this is so although there was no specific allegation in the statement of claim on the specially indorsed writ that there was consideration for the agreement.

COOKE v. RICKMAN, [1911] 2 K. B. 1125; 81 [L. J. K. B. 38; 55 Sol. Jo. 663—Div. Ct.

EVIDENCE.

I. IN GENERAL.	COL.
(a) Admissibility	203
(b) Affidavits	204
[No paragraphs in this vol. of the Digest.]	
(c) Miscellaneous	204
II. DOCUMENTS.	
(a) In General	205
[No paragraphs in this vol. of the Digest.]	
(b) Certificates	205
[No paragraphs in this vol. of the Digest.]	
(c) Entries in Books, Reports, etc.	205
(d) Public Documents	205
[No paragraphs in this vol. of the Digest.]	
III. PERPETUATING TESTIMONY	205
[No paragraphs in this vol. of the Digest.]	
IV. PRESUMPTION.	
(a) Of Death	205
[No paragraphs in this vol. of the Digest.]	
(b) Generally	205
[No paragraphs in this vol. of the Digest.]	
See also CRIMINAL LAW, I. (b); FOOD, No. 15; GAME, No. 3; STREET TRAFFIC, No. 2.	

I. IN GENERAL.

(a) Admissibility.

See also EDUCATION, No. 7; PLEADING, No. 1; TRADE MARKS, No. 12.

1. Convicted Felon—Copy of Conviction—Presumptive Proof of Commission of the Crime.—

Where a convicted felon, or the personal representative of a convicted murderer who has been executed, brings any civil proceeding to establish claims, or to enforce rights, which result to the felon or to the convicted testator from his own crime, the conviction is admissible in evidence, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime.

Dictum of Bramwell, L.J., in *Leyman v. Latimer* (1878) 3 Ex. D. 352) doubted.

Yates and Others v. Kyffin-Taylor and Wark ([1889] W. N. 141) disapproved.

IN THE ESTATE OF CRIPPEN, [1911] P. 108; [80 L. J. P. 47; 104 L. T. 224; 27 T. L. R. 258; 55 Sol. Jo. 273—Evans, Pres.

See S. C. under EXECUTORS, II. (k).

2. Declaration of Deceased Person—Declaration Against Interest.—In a probate suit it was alleged that the testatrix destroyed her will at a time when she was not of sound mind, memory, or understanding. Under the will which had been destroyed her husband took a life interest in her estate, whereas under an ante-nuptial settlement he was, in the events that had happened, entitled absolutely to her estate.

HELD—that a statement by the husband, who had died before the suit was brought, that he did not think the testatrix was of sound mind when she destroyed her will, was admissible in evidence as being in disparagement of his own title by limiting it to a life estate.

FAWKE v. MILES, 27 T. L. R. 202—Evans, Pres.

(b) Affidavits.

[No paragraphs in this vol. of the Digest.]

(c) Miscellaneous.

3. Practice—Witness—Obligation to Produce Documents—Documents not the Property but in the Physical Possession of Witness. *Foreign Tribunals Evidence Act, 1856* (19 & 20 Vict., c. 113), s. 5].—A servant who is called upon to produce documents at a trial or at an examination under the *Foreign Tribunals Evidence Act, 1856*, and who has the physical possession of the documents is not bound to produce them unless it can be shown that he has such possession, custody, or control of the documents as would empower him to show or produce them in evidence without violating his duty towards his employer.

Decision of Div. Ct. (28 T. L. R. 36; 56 Sol. Jo. 74) reversed upon this point (Kennedy, L.J., dissenting).

ECCLES & CO. v. LOUISVILLE AND NASHVILLE RAILROAD CO., [1912] 1 K. B. 135; 28 T. L. R. 67; 56 Sol. Jo. 107—C. A.

4. Privilege—Public Policy—Affairs of State—Statements to Lord Chamberlain.—The Lord Chamberlain cannot be compelled to disclose in evidence communications made to him in his official capacity.

Decision of Darling, J. (27 T. L. R. 189) affirmed.

WEST v. WEST, 27 T. L. R. 476—C. A.

II. DOCUMENTS.

See also HIGHWAYS, No. 5.

(a) In General.

[No paragraphs in this vol. of the Digest.]

(b) Certificates.

[No paragraphs in this vol. of the Digest.]

(c) Entries in Books, Reports, etc.

See also BANKERS, No. 3.

5. *Transcript of Shorthand Note of Judgment—Admissibility of Copy as Record Without Proof.*—During the trial of an action some question turned on the proper construction to be given to a certain Act of Parliament. There was tendered, not as evidence in the case, but as a record, and for the purpose of construction, a document which purported to be a copy of a transcript of the shorthand notes of a judgment delivered by Lord Denman in 1838 on the construction of that Act. It had been produced from among the papers of one of the parties to the action of 1838, and it purported to give a correct report of that judgment.

HELD—that the document might be admitted, not as evidence, but as a record of the judgment and as a statement of what a previous learned judge had said on a former occasion as to the meaning of an Act of Parliament, and that document must not therefore be entered as evidence by the registrar in the order to be made in the present case.

RENSHAW v. DIXON, [1911] W. N. 40; 45 [L. J. N. C. 92—Warrington, J.]

(d) Public Documents.

[No paragraphs in this vol. of the Digest.]

III. PERPETUATING TESTIMONY.

[No paragraphs in this vol. of the Digest.]

IV. PRESUMPTION.

(a) Of Death.

[No paragraphs in this vol. of the Digest.]

(b) Generally.

[No paragraphs in this vol. of the Digest.]

EXCISE.

See INTOXICATING LIQUORS ; REVENUE.

EXECUTION.

See also BANKRUPTCY, Nos. 4, 11, 16, 30 ; COMPANIES, No. 10 ; SHERIFFS AND BAILIFFS, No. 1.

1. *Judgment against Company—Postponement of Execution obtained by Trickery—Voluntary Liquidation—Leave to Proceed with Execution—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 140.*—The plaintiffs obtained judgment

against the defendant company on February 24th, 1911, and their solicitor applied on February 25th to the company's solicitor to obtain and send to him the company's cheque in payment of the judgment debt. The plaintiffs' solicitor was led to believe by the solicitor and by a director of the company that a cheque would be sent in a few days, and in consequence he delayed issuing execution, but he was not told, and did not know, that on February 25th a notice had been sent out convening a meeting of the company for March 6th for the purpose of passing a resolution for the voluntary liquidation of the company, on the ground that the company was unable to pay its debts. The meeting was held on March 6th and the resolution for voluntary liquidation was passed. On the same day, the judgment debt not having been paid, the plaintiffs issued execution.

HELD—that the postponement of execution had been caused by a trick on the part of the defendant company, and that the plaintiffs, therefore, ought not to be prevented from proceeding with their execution.

In re Vron Colliery Co. ((1882) 20 Ch. D. 442) distinguished.

ARMORDUCT MANUFACTURING CO., LD. v. [GENERAL INCANDESCENT CO., LD., [1911] 2 K. B. 143; 80 L. J. K. B. 1005; 104 L. T. 805; 18 Manson, 292—C. A.]

EXECUTORS AND ADMINISTRATORS.

	COL.
I. EXECUTORS GENERALLY . . .	207
II. GRANT OF LETTERS OF ADMINISTRATION.	
(a) Administration Bonds . . .	208
(b) As on an Intestacy . . .	208
(c) Citation . . .	209
[No paragraphs in this vol. of the Digest.]	
(d) Creditors . . .	209
(e) Crown Rights . . .	209
[No paragraphs in this vol. of the Digest.]	
(f) Cum Testamento Annexo . . .	209
(g) De Bonis Non . . .	209
(h) Foreigners . . .	209
[No paragraphs in this vol. of the Digest.]	
(i) Limited Grants . . .	209
[No paragraphs in this vol. of the Digest.]	
(k) Passing Over . . .	209
(l) Presumption of Death of Next of Kin . . .	210
[No paragraphs in this vol. of the Digest.]	
(m) Renunciation . . .	210
[No paragraphs in this vol. of the Digest.]	
(n) Revocation of Grant . . .	210
[No paragraphs in this vol. of the Digest.]	
(o) Generally . . .	210
[No paragraphs in this vol. of the Digest.]	

Executors and Administrators—Continued.

III. PROBATE.	COL.
(a) Costs	210
[No paragraphs in this vol. of the Digest.]	
(b) Effect	210
(c) Executor according to the Tenor	210
[No paragraphs in this vol. of the Digest.]	
(d) Executor Misdescribed	210
[No paragraphs in this vol. of the Digest.]	
(e) Foreign Wills	210
(f) Lost Will	211
[No paragraphs in this vol. of the Digest.]	
(g) Practice	211
(h) Revocation of Probate	212
IV. PAYMENT OF DEBTS AND DISTRIBUTION OF ASSETS.	
(a) Conveyance of Real Estate	212
[No paragraphs in this vol. of the Digest.]	
(b) Insolvent Estate	212
[No paragraphs in this vol. of the Digest.]	
(c) Payment of Debts	212
(d) Payment of Legacies	212
(e) Possible Future Liabilities	213
(f) Right of Retainer	213
(g) Testamentary Expenses	213
[No paragraphs in this vol. of the Digest.]	
(h) Specific Legacies	214
V. POWERS AND LIABILITIES.	
(a) Carrying on Business	214
[No paragraphs in this vol. of the Digest.]	
(b) Liabilities	214
(c) Powers	214
VI. ADMINISTRATION ACTION	214

See also CONFLICT OF LAWS (F); LIMITATION OF ACTIONS, No. 7; TRUSTS.

I. EXECUTORS GENERALLY.

See also TRUSTS, Nos. 6, 7.

1. *Executor Next of Kin Action by Executor for Revocation of Probate—Knowledge of all Facts at Date of Probate—Estoppel—Laches—Will.*—An executor, who is also next of kin of the testator, and who takes probate with knowledge of all the facts, is not disabled from taking proceedings to contest the validity of the will in the same manner as a bare executor would be under similar circumstances. The fact of his having taken probate, if a reasonable explanation is given for having done so, does not estop him from afterwards instituting proceedings to disaffirm the will.

Whether there have been laches on the part of the person disputing the will is a question of fact. A certain amount of delay on the part of an executor, who is also next of kin, in instituting proceedings to prevent probate, does not necessarily amount to negligence on his part or warrant the Court in holding, notwithstanding that he had all along full knowledge of the facts, that it would be inequitable to allow him to proceed to impeach the will, especially if the

assets have not been distributed and if his conduct has not led other persons to alter their position to their own detriment.

WILLIAMS v. EVANS, [1911] P. 175; 80 L. J. P. [115; 105 L. T. 79; 27 T. L. R. 506—Horridge, J.

2. *Executor not Appointed Trustee—Express Trustee—Earmarking Entries—Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38), s. 13.*—The mere fact that an executor, who is not also appointed a trustee by the will, retains a fund to answer the claim of a particular next of kin, is not enough to turn the executor into an express trustee of the fund, but if, in addition, he earmarks the fund as the fund of the particular next of kin, and uses express words which show that he intends to hold the fund, not for himself but for the persons entitled to it, he does become an express trustee of the fund.

IN THE ESTATE OF GOMPERTZ, PARKEN v. [GOMPERTZ, 105 L. T. 664; 56 Sol. Jo. 11—Warrington, J.

II. GRANT OF LETTERS OF ADMINISTRATION.

See also TRUSTS, No. 20.

(a) Administration Bonds.

See also No. 9, *infra*.

3. *Condition to render a True and Just Account whenever required by Law so to do—Particular Breaches not Alleged—Statute 8 & 9 Will. 3, c. 11, s. 8.*—An administration bond containing the usual conditions is a bond within the provisions of the Statute 8 & 9 Will. 3, c. 11.

COPE v. BENNETT, HARRIS THIRD PARTY, 55 Sol. Jo. 521—Eady, J.

4. *Assignment—Practice—Summons before Registrar—Assignees—Representative Capacity—Right to Sue in own Names—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 83—Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 3.*—An order for the assignment of an administration bond under sect. 83 of the Court of Probate Act, 1857, may be made by a registrar of the Probate Division on a summons.

In the Goods of Rees ([1896] W. N. 57) followed.

Registrar's report on this practice adopted. The assignees, though bound to hold all moneys recovered as trustees for all persons interested in the estate, need not sue in a representative capacity, but may sue simply in their own names.

Sandrey v. Michell ((1863) 3 B. & S. 405) distinguished.

COPE v. BENNETT, [1911] 2 Ch. 488; 105 L. T. [541; 55 Sol. Jo. 725—Eady, J.

(b) As on an Intestacy.

5. *Practice—Condemning Will on Motion—Non-appearance of Party Interested—Grant of*

II. Grant of Letters of Administration—*Continued*.

Administration Notwithstanding Alleged Will.—The Court has power to condemn a will upon motion. But where a party interested failed to appear on such motion, though served with a citation, and personally served with notice of the motion, and not being professionally advised, appeared to be ignorant of her rights, the Court confined itself to granting administration notwithstanding the alleged will.

Brennan v. Dillon ((1873) Ir. R. 7 Eq. 215; 8 Eq. 94) approved.

IN RE GILBERT, [1911] 2 I. R. 36 Madden, J., Ireland.

(c) Citation.

[No paragraphs in this vol. of the Digest.]

(d) Creditors.

6. *No Known Relations—Pending Action—Probate Act, 1857* (20 & 21 Vict. c. 77), s. 73.]—The Court made a grant of administration of the estate of an intestate, who had no known relations and who died pending proceedings to recover a sum due to him, to a creditor under sect. 73 of the Probate Act, 1857, without citing the next of kin, the creditor undertaking to bring the balance of the estate into Court in order to safeguard the Treasury.

IN THE ESTATE OF HEERMAN, [1910] P. 357; [80 L. J. P. 7; 103 L. T. 816; 27 T. L. R. 51; 55 Sol. Jo. 30—Deane, J.

7. *Grant to Person as Creditor who had Renounced Probate*.—Where A., the executor named in the will of the testator, renounced probate, and administration with the will annexed was granted to the testator's residuary legatee, who died intestate with no known relative, leaving the estate unadministered, the Court made a grant of administration *de bonis non* to A. as a creditor although he had renounced probate.

IN THE ESTATE OF TOSCANI, [1912] P. 1; 28 [T. L. R. 84; 56 Sol. Jo. 93—Deane, J.

(e) Crown Rights.

[No paragraphs in this vol. of the Digest.]

(f) Cum Testamento Annexo.

See No. 13, *infra*.

(g) De Bonis Non.

See No. 7, *supra*.

(h) Foreigners.

[No paragraphs in this vol. of the Digest.]

(i) Limited Grants.

[No paragraphs in this vol. of the Digest.]

(k) Passing Over.

See also No. 6, *supra*.

8. *Married Woman—Passing over Executrix of Husband—Husband a Convicted Murderer—Effect of Certificate of Corroboration—Court of Probate Act, 1857* (20 & 21 Vict. c. 77), s. 73.]—

A married woman died intestate, leaving her husband surviving her. The husband, who was convicted of the wilful murder of his wife and executed, appointed a person to be his executrix and universal legatee, and she claimed, as executrix, to be entitled to a grant of administration to the estate of her testator's deceased wife.

HELD—that there were "special circumstances" within sect. 73 of the Court of Probate Act, 1857, for passing over the executrix, and for appointing another person as the administrator of the deceased wife's estate.

IN THE ESTATE OF CRIPPEN, [1911] P. 108; [80 L. J. P. 47; 104 L. T. 224; 27 T. L. R. 258; 55 Sol. Jo. 273—Evans, Pres.

See S. C. under EVIDENCE I. (a).

9. *Grant to Public Trustee—Probate Act, 1857* (20 & 21 Vict. c. 77), ss. 73, 81—*Public Trustee Act, 1906* (6 Edw. 7, c. 55), ss. 6 (4), 11 (4).]—The Court has power to make a grant of administration to the Public Trustee, passing over the heir-at-law, widow, and next of kin of deceased.

By sect. 11, sub-sect. 4, of the Public Trustee Act, 1906, the Public Trustee is not required to give a bond or security.

IN THE ESTATE OF WOOLLEY, 55 Sol. Jo. [220—Evans, Pres.

(1) Presumption of Death of Next of Kin.

[No paragraphs in this vol. of the Digest.]

(m) Renunciation.

[No paragraphs in this vol. of the Digest.]

(n) Revocation of Grant.

[No paragraphs in this vol. of the Digest.]

(o) Generally.

[No paragraphs in this vol. of the Digest.]

III. PROBATE.

(a) Costs.

[No paragraphs in this vol. of the Digest.]

(b) Effect.

See No. 1, *supra*.

(c) Executor according to the Tenor.

[No paragraphs in this vol. of the Digest.]

(d) Executor Misdescribed.

[No paragraphs in this vol. of the Digest.]

(e) Foreign Wills.

10. *Two Wills—Will Dealing with Property in England and Will Dealing with Property Abroad—Property Governed by Second Will brought to England.*]—The Court granted probate of a will disposing of property abroad where some of the property that passed under that will was brought to England.

STUBBINGS v. CLUNIES-ROSS, 27 T. L. R. 361—[Evans, Pres.

11. *Two Wills—Will Dealing with Property Abroad—Will Dealing with Real Property in England.*]—The testator, a German, left two

III. Probate—Continued.

wills, one in German form dealing with all his personality wherever situated and his real estate in Germany, and the other in English form dealing only with his real property in England. The Court granted probate to the executors of the English will limited to real estate in England, and a *cæterorum* grant to the executor of the German will.

IN THE ESTATE OF VON BRENTANO, [1911]
[P. 172; 80 L. J. P. 80; 105 L. T. 78; 27
T. L. R. 395—Evans, Pres.]

(f) Lost Will.

[No paragraphs in this vol. of the Digest.]

(g) Practice.

See also No. 5, *supra*; RECEIVERS, No. 2.

12. Discovery Briefs in previous Proceedings.—In a probate suit, the defendants, alleging that the deceased was not of sound memory and understanding, asked for production of the briefs which had been prepared by one of the plaintiffs as solicitor for the deceased in certain proceedings which had been taken against her, and which the defendants alleged contained matter material to the issue of the deceased's state of mind.

HELD—that the defendants were not entitled to production of the briefs, which had been confidentially prepared by a solicitor for counsel to use or not as they might think fit.

CURTIS *v.* BEANEY, [1911] P. 181; 80 L. J. P. [87; 105 L. T. 303; 27 T. L. R. 462—Deane, J.]

13. Administration with Will Annexed to Executor of Residuary Legatee—Suit for Revocation of Probate of Will of such Legatee—Appointment of Administrator and Receiver *pendente lite* to act as to both Estates.—A. died making B. his executor and residuary legatee. Eight days later B. died without having proved A.'s will. On the day B. died she was alleged to have executed a will naming C. as her executor. C. proved this will and then obtained letters of administration to the estate of A. with his will annexed.

D. brought a suit against C. and others for revocation of the probate of B.'s will. An application by C. to appoint him administrator and receiver *pendente lite* in the estate of B. was opposed by D., and the Court ordered the appointment of an independent person with power to act as to both estates.

SHORTER *v.* SHORTER, [1911] P. 184; 80 [L. J. P. 120; 105 L. T. 382; 27 T. L. R. 522—Evans, Pres.]

14. Two Testamentary Writings—Later in Date Described as a Codicil.—As a general rule, when the second of two testamentary writings is *prima facie* a "codicil," both documents must be admitted to probate, as together containing the testamentary wishes of the testator; but when it is clear that the second covers the same ground as and was intended to be in substitution for the first, the second will be regarded as

the "dominating document," and will alone be admitted to probate.

IN THE GOODS OF ADAMS, 45 I. L. T. 93—
[Ross, J., Ireland.]

(h) Revocation of Probate.

See No. 13, *supra*.

IV. PAYMENT OF DEBTS AND DISTRIBUTION OF ASSETS.

See also No. 23, *infra*; POWERS, No. 1;
WILLS, XII., XXIV.

(a) Conveyance of Real Estate.

[No paragraphs in this vol. of the Digest.]

(b) Insolvent Estate.

[No paragraphs in this vol. of the Digest.]

(c) Payment of Debts.

See POWERS, No. 1.

(d) Payment of Legacies.

See also DEATH DUTIES, No. 8; POWERS,
No. 1; WILLS, Nos. 50, 51.

15. Pecuniary Legacy to Executor—Appropriation of Securities of Uncertain Value.—An executor cannot appropriate, in or towards satisfaction of a pecuniary legacy bequeathed to himself, securities having no ascertainable market value, at his own valuation.

IN RE BYTHWAY, GOUGH *v.* DAMES, 80 L. J. [Ch. 246; 104 L. T. 411; 55 Sol. Jo. 235—
Joyce, J.]

16. Part of Specific Legacy Applied in Payment of Debt—Marshalling—Compensation out of Residuary Estate—Legacy Contingent on Legatee's Attaining Twenty-one—Time at which Value to be Ascertained—Legacy Given to Trustee for Legatee—Income.—B. gave all his shares in a company to his son if he had attained twenty-one at B.'s death, and if not to a trustee in trust to transfer them to his son when he attained twenty-one. The son was an infant at B.'s death. The executors with the sanction of the Court transferred some of the shares to a creditor in payment of a debt. The son afterwards attained twenty-one. The shares had fallen in value.

HELD—that the son was entitled to compensation out of B.'s residuary estate for the shares so transferred, but for the purpose of compensation the value of the shares must be ascertained as at the date when the son attained twenty-one.

HELD, ALSO—that it made no difference in this respect that the shares were given to a trustee and not directly to the son, and the son was entitled to the income received from the shares from the death.

IN RE BROADWOOD, LYALL *v.* BROADWOOD,
[1911] 1 Ch. 277; 80 L. J. Ch. 202; 104 L. T.
49—Neville, J.]

17. Debtor Legatee—Set-off—Retainer of Legacy in Satisfaction of Debt—Partnership Debt.—The principle that a legatee who is indebted to the testator's estate can receive

IV. Payment of Debts and Distribution of Assets —Continued.

nothing from the testator's bounty until he has brought into account the amount due in respect of the debt does not apply where the debt is owed by a partnership of which the legatee is a member.

Smith v. Smith ((1861) 3 Giff. 263) explained and distinguished.

TURNER v. TURNER, [1911] 1 Ch. 716; 80 [L. J. Ch. 473; 104 L. T. 901—C. A.

(e) Possible Future Liabilities.

18. Leaseholds — Assignment by Executor to "Purchaser" — Meaning — Payment to Assignee — Covenant by Assignee to Indemnify — Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35). s. 27.]—An assignment by an executor of his testator's leasehold property to an assignee who is paid money by taking over the lease and indemnifying the executor is not an assignment to a "purchaser" within sect. 27 of the Law of Property Amendment Act, 1859.

The word "purchaser" in this section means a person who buys the lease and pays a price in money for it.

Dodson v. Sammell ((1861) 1 Dr. & Sm. 575 579). *Dean v. Allen* ((1855) 20 Beav. 1, 4), and *Waller v. Barrett* ((1857) 24 Beav. 413, 420) applied.

IN RE LAWLEY, JACKSON v. LEIGHTON [1911] 2 Ch. 530; 105 L. T. 571—Eady, J.

(f) Right of Retainer.

19. Administrator Undischarged Bankrupt.]—An administrator who is an undischarged bankrupt has no right to retain, out of the assets received by him as administrator, a debt due to him from the deceased intestate.

WILSON v. WILSON, [1911] 1 K. B. 327; 80 [L. J. K. B. 296; 104 L. T. 96; 18 Manson, 18—Channell, J.

20. Administration of Estate of Deceased Insolvent — Executor's Right of Retainer— Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125 (9).]—An executrix, before receiving notice of the presentation of a petition for the administration of her testator's estate in bankruptcy, gave notice to the creditors that she intended to retain a debt due to her out of the assets. After receiving notice of the presentation of such a petition she sold some of the assets and retained her debt out of the proceeds.

HELD—that her intimation to the creditors of her intention to retain her debt was a good exercise of her right of retainer, and that her subsequent receipt of the money after notice of the presentation of the petition was not invalidated by sect. 125, sub-sect. 9, of the Bankruptcy Act, 1883.

IN RE BROAD, EX PARTE OFFICIAL RECEIVER, 56 Sol. Jo. 35—Div. Ct.

(g) Testamentary Expenses.

[No paragraphs in this vol. of the Digest.]

(h) Specific Legacies.

See No. 16, *supra*; TRUSTS, No. 7.

V. POWERS AND LIABILITIES.

(a) Carrying on Business.

[No paragraphs in this vol. of the Digest.]

(b) Liabilities.

See Nos. 2, 18, *supra*.

(c) Powers.

21. Pledge of Chattels Belonging to Estate— Lapse of Fourteen Years since Testator's Death— Title of Pledgee.]—There is no limit to the period of time during which an executor may exercise his ordinary power to sell or pledge the personal estate of his testator.

SOLOMON v. ATTENBOROUGH, [1911] 2 Ch. 159; [80 L. J. Ch. 503; 105 L. T. 11; 27 T. L. R. 471; 55 Sol. Jo. 535—Joyce, J.

See S. C. under PAWNBROKERS AND PLEDGES.

VI. ADMINISTRATION ACTION.

See also RECEIVERS, No. 2; SOLICITORS, No. 25.

22. Practice—Costs of Inquiries as to Persons Entitled to Share—Moieties of One Share— Numerous Inquiries as to One Moiety—R. S. C. Ord. 65, r. 14B.]—Moieties of a third share, directed by a will to be applied, in events which happen, on the respective trusts of the other two third shares, are "shares" within the meaning of Ord. 65, r. 14B, which provides that the costs of inquiries to ascertain the persons entitled to any legacy, money, or share shall be paid out of such legacy, money, or share, unless the judge shall otherwise direct. And the rule does not mean that special directions are to be given by the judge without special reasons.

IN RE WHITAKER, DENISON-PENDER v. EVANS, [1911] 1 Ch. 214; 80 L. J. Ch. 63; 103 L. T. 657—Neville, J.

23. Order for Sale of Real Estate—Conversion.]—An absolute order for sale made within the jurisdiction of the Court in an administration action operates as a conversion from the date of the order.

Arnold v. Dixon ((1874) L. R. 19 Eq. 113) and *Hyett v. Mekin* ((1884) 25 Ch. D. 735) approved.

FAUNTLEROY v. BEEBE, [1911] 2 Ch. 257; [80 L. J. Ch. 651; 104 L. T. 704; 55 Sol. Jo. 497—C. A.

24. Practice—Sale of Real Estate—Conditional Contract—Approval of Master—Order not Entered—Adjournment to Judge—Refusal to Confirm.]—In an administration suit an estate was ordered to be sold. A contract was entered into, subject to confirmation by the Court, and approved by the Master, but before the order was passed and entered a third party,

VI. Administration Action—Continued.

a creditor of the estate, offered to purchase the property at a higher price.

Upon summonses by the third party for liberty to attend proceedings under the administration order, and by the purchaser for the passing of the Master's order,

HELD—that the matter was still open as the Master's confirmation was ineffective until the order had been passed and entered, and that the judge had power to refuse confirmation, the proper course being to treat the summons to confirm the sale as adjourned to the judge.

In re Bartlett ((1880) 16 Ch. D. 561) distinguished.

IN RE THOMAS, BARTLEY v. THOMAS, [1911] 2 Ch. 389; 80 L. J. Ch. 617; 105 L. T. 59; 55 Sol. Jo. 567—Warrington, J.

See S. C., PRACTICE, No. 27.

25. Practice—Parties—Administration of Real Estate—Action by Single Creditor—R. S. C. Ord. 3, r. 4; Ord. 16, r. 9; Ord. 55, rr. 3, 4—Land Transfer Act, 1897 (60 & 61 Vict. c. 65). ss. 1 (1), 2 (2).—If a creditor desires administration of real estate of a person who died after the date of the Land Transfer Act, 1897, it is no longer necessary that he should sue on behalf of all the creditors.

IN RE JAMES, JAMES v. JONES, [1911] 2 Ch. 348; 80 L. J. Ch. 681—Warrington, J.

26. Practice—Parties—Single Creditor named as Sole Defendant.—An action for administration cannot be maintained against one creditor as sole defendant.

Mandeville v. Mandeville ((1889) 23 L. R. Ir. 339) followed.

IN RE ROE, ROE v. SQUIRE, 45 I. L. T. 144 [Meredith, M.R., Ireland.

27. Practice—Costs—Order without Reservation of Costs—Further Consideration—Liability of Trustee.—In an action against an executor or trustee where the Court, after hearing the facts, makes an order for administration without any reservation of costs, it is not in accordance with the practice to entertain an application on further consideration that the executor or trustee should be ordered to pay costs down to the judgment; but this practice does not extend to a case where the order is made without evidence on both sides, or full discussion, either for the sake of convenience or to save expense, or otherwise in circumstances in which the Court has not a sufficient knowledge of the facts.

IN RE GARDNER, ROBERTS v. FRY, [1911] [W. N. 155; 131 L. T. Jo. 218; 45 L. J. N. C. 435—Eve, J.

28. Practice—Costs—Insolvent Estate—Realisation of Assets—Separate Account—Priority.—In a creditor's administration suit, in which the general assets turned out to be insufficient to pay the costs of suit in full, the defendants, executors of deceased, claimed priority for their costs of suit, as against a

secured creditor who had established a charge upon a fund which had been realised in connection with a sale in another suit, and had been brought into Court and carried to a separate account.

HELD—that they could only claim priority for such of their costs of suit as were relative to the separate account.

BELL v. BUTTERLY, [1911] 1 I. R. 312; 45 [I. L. T. 278—Barton, J., Ireland.

EXECUTORY DEVISE.

See TRUSTS; WILLS.

EXHUMATION OF HUMAN REMAINS.

See BURIAL AND CREMATION.

EXPLOSIVES.

1. Prosecution—Requisite Consent of Attorney-General not Obtained—Jurisdiction—Explosive Substances Act, 1883 (46 & 47 Vict. c. 3), ss. 2, 7.—A prisoner was convicted on an indictment charging him with an offence under sect. 2 of the Explosive Substances Act, 1883. The consent of the Attorney-General to the preferment of the indictment, which is required by sect. 7 of that Act, had not been obtained. The prisoner appealed against the conviction.

HELD—that the conviction must be quashed.

R. v. BATES, [1911] 1 K. B. 964; 80 L. J. K. B. 507; 104 L. T. 688; 75 J. P. 271; 27 T. L. R. 314; 55 Sol. Jo. 410—C. C. A.

EXPULSION ORDER.

See ALIENS.

EXTORTION.

See CRIMINAL LAW.

EXTRADITION AND FUGITIVE OFFENDERS.

See also DEPENDENCIES, No. 18.

1. Extradition Treaty with France—Requisition Unaccompanied by Depositions—Matter of Procedure.—The applicant, who was charged

Extradition and Fugitive Offenders—Continued.

with having committed an offence in France, was arrested under a provisional warrant issued by a metropolitan police magistrate in consequence of a requisition by the Secretary of State for Home Affairs made in accordance with the Extradition Act, 1870. The requisition was not accompanied by depositions made before a magistrate in France as required by art. 7 of the Extradition Treaty with France. A rule *nisi* for a *habeas corpus* having been obtained on the ground that the absence of the depositions invalidated the proceedings:—

HELD, discharging the rule—that the point relied upon by the applicant was merely one of procedure and not of jurisdiction.

R. v. GOVERNOR OF BRIXTON PRISON, EX PARTE THOMPSON, [1911] 2 K. B. 82; 80 L. J. K. B. 986; 105 L. T. 66; 75 J. P. 311; 27 T. L. R. 350—Div. Ct.

2. Fugitive Offender—Committal for Return to India—Habeas Corpus—Application Refused—Appeal—“Criminal Cause or Matter”—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69).—The King’s Bench Division refused an application for a writ of *habeas corpus* made on behalf of a person who had been committed for removal to India under the Fugitive Offenders Act, 1881.

HELD—that such decision was given in a “criminal cause or matter” within the meaning of sect. 47 of the Judicature Act, 1873, and therefore that no appeal would lie to the Court of Appeal.

R. v. GOVERNOR OF BRIXTON PRISON, EX PARTE SAVARKAR, [1910] 2 K. B. 1056; 80 L. J. K. B. 57; 103 L. T. 473, 483; 26 T. L. R. 561; 54 Sol. Jo. 635—C. A.

3. Fugitive Offender—Committal for Return to India—Habeas Corpus—Application Refused—Court of Appeal—Jurisdiction—“Superior Court”—Original Application for Relief—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), ss. 2, 10, 35, 39 (1).—Where the applicant obtained a rule *nisi* for a writ of *habeas corpus*, and the King’s Bench Division merely decided that the rule should be discharged, without adjudicating upon any application for relief under the Fugitive Offenders Act, 1881:—

HELD—that the Court of Appeal, as a “superior Court” within the meaning of that expression in the Fugitive Offenders Act, 1881, had jurisdiction to entertain an original application for relief by the applicant under that Act.

R. v. GOVERNOR OF BRIXTON PRISON, EX PARTE SAVARKAR, [1910] 2 K. B. 1056, 1067; 80 L. J. K. B. 57; 103 L. T. 473, 486; 26 T. L. R. 561—C. A.

FACTORIES AND SHOPS.

COL.

I. DEFINITIONS	218
II. EMPLOYMENT	219
III. MACHINERY	219
IV. MEANS OF ESCAPE FROM FIRE	220
V. SANITATION AND VENTILATION	220
[No paragraphs in this vol. of the Digest.]	
VI. UNDERGROUND BAKEHOUSES	220
[No paragraphs in this vol. of the Digest.]	

I. DEFINITIONS.

1. Laundry—Home for Orphans—“Public Institution”—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 123—Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), s. 1.]—The respondents, who were the trustees of the British Orphan Asylum at Slough, were the occupiers of premises used as a home for orphan children, one of the buildings being set apart for use as a laundry and containing a mangle worked by mechanical power. The work done at the laundry was confined to the washing of linen and clothes exclusively used at the orphan asylum. The place was maintained by subscriptions and donations for which appeals were made to the public, and the children were elected to the asylum by the subscribers and donors and were also admitted upon payment of a sum of money. The premises and grounds were private, and the asylum received no Government grant and was not under public control of any kind.

The respondents were summoned for not affixing at the laundry an abstract of the Factory and Workshop Act, 1901, as required by sect. 128 of that Act. By sect. 1 of the Factory and Workshop Act, 1907, the Act of 1901 applies to laundries carried on incidentally to the purposes of any public institution.

HELD—that the British Orphan Asylum was a public institution, and that therefore the trustees had committed an offence in not affixing the abstract in question.

SEAL v. BRITISH ORPHAN ASYLUM, 104 L. T. [424; 75 J. P. 152; 22 Cox, C. C. 392; 9 L. G. R. 238—Div. Ct.]

2. Hotel Laundry—Carried on as “Ancillary to another Business”—Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), s. 1.]—The respondent was summoned for employing a woman otherwise than in accordance with the period of employment allowed for women in laundries under the Factory and Workshop Acts, 1901 and 1907, and for not having affixed at the entrance of the workshop the prescribed abstract of the Acts. The justices found that the respondent carried on the business of a hotel proprietor and employed two women in a laundry under such circumstances as to constitute the breaches of the Factory and Workshop Acts complained of, if the laundry was, within the meaning of sect. 1 of the Factory and Workshop Act, 1907, carried on as ancillary to the business of hotel proprietor. The laundry

**EXTRAORDINARY
TRAFFIC.**

See HIGHWAYS.

I. Definitions—Continued.

was not used for the washing of visitors' linen, but only for washing the table linen, sheets, blankets, etc., used in the hotel. The justices held that the laundry was not carried on as ancillary to the hotel business and dismissed the informations.

HELD—that on the above facts the justices ought to have convicted the respondent.
SADLER v. ROBERTS, 105 L. T. 106; 75 J. P. 342—Div. Ct.

II. EMPLOYMENT.

See also No. 2, *supra*; No. 5, *infra*.

3. Employment of Women—Prohibited Hours—Machine in Motion for Purpose of Cleaning—Manufacturing Process also Carried on—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 24 (3) (b).] By sect. 24, sub-sect. 3 (b), of the Factory and Workshop Act, 1901, the period of employment of women in a textile factory on a Saturday must end at half-past eleven o'clock in the forenoon "as regards employment in any manufacturing process," and at noon as regards employment for any purpose.

In the respondents' cotton-spinning factory an inspector found at 11.50 a.m. on a Saturday two women engaged in cleaning the machines at which they were working, and which it was their duty to tend and clean. The machines had not been in motion from 11.30 a.m. till immediately before 11.50 a.m., and they were then in motion merely for the purpose of being cleaned, and not for the purpose of manufacturing. The machines could not be properly cleaned without setting them in motion for that purpose; and they performed the manufacturing process completely without the intervention of the women, except for the purpose of feeding, cleaning, and regulating. While the women were cleaning the machines, the machines were apparently working and performing the manufacturing process as if the women had not been cleaning them.

HELD—that inasmuch as the machines were in motion merely for the purpose of being cleaned, and not for the purpose of manufacturing, the women were not employed in a "manufacturing process" within the meaning of the sub-section, and no offence thereunder had been committed.

CRABTREE v. COMMERCIAL MILLS SPINNING [Co., Ltd., 103 L. T. 879—Div. Ct.]

III. MACHINERY.

See also No. 3, *supra*.

4. Fencing—Hoist—Not Connected with Mechanical Power—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 10 (1).]—Sect. 10 (1) of the Factory and Workshop Act, 1901, provides that "every hoist or teagle and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of any water-wheel or engine worked by any such power, must be securely fenced."

HELD—that the words "directly connected with the steam or water or other mechanical

power" do not qualify the words "every hoist or teagle."

JACKSON v. A. G. MULLINER MOTOR BODY CO., [1911] 1 K. B. 546; 80 L. J. K. B. 173; 104 L. T. 181; 75 J. P. 103—Div. Ct.

5. Employment of Children—Cleaning Machinery in Motion—Taking By-product off Rollers—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 13.]—In the respondents' factory a child of twelve was employed to remove the fluff from the rollers and board of a spinning machine while the machine was in motion by the aid of mechanical power. Unless the fluff was removed—necessarily while the machine was in motion—the rollers would become choked and the process would stop. The fluff was not mere refuse, but had a saleable value, and was in fact sold.

HELD—that the removal of the fluff from the rollers was a "cleaning of machinery" within sect. 13 of the Factory and Workshop Act, 1901, notwithstanding the fact that the fluff had a saleable value; and therefore that the respondents had infringed sect. 13 by allowing the child to be so employed.

TAYLOR v. MARK DAWSON AND SON, LD., [1911] 1 K. B. 145; 80 L. J. K. B. 102; 103 L. T. 508; 75 J. P. 5; 27 T. L. R. 45—Div. Ct.

IV. MEANS OF ESCAPE FROM FIRE.

See METROPOLIS, No. 6.

V. SANITATION AND VENTILATION.

[No paragraphs in this vol. of the Digest.]

VI. UNDERGROUND BAKEHOUSES.

[No paragraphs in this vol. of the Digest.]

FACTORS.

See AGENCY; BAILMENT; PAWN-BROKER.

FAIRS.

See MARKETS AND FAIRS.

FALSE IMPRISONMENT.

See DEPENDENCIES, No. 32; TRESPASS.

FALSE PERSONATION.

See CRIMINAL LAW AND PROCEDURE.

FALSE PRETENCES.

See CRIMINAL LAW AND PROCEDURE.

FALSE WARRANTY.*See* FOOD AND DRUGS.**FALSIFICATION OF
ACCOUNTS.***See* CRIMINAL LAW AND PROCEDURE.**FAMILY ARRANGEMENTS.**

[No paragraphs in this vol. of the Digest.]

FENCES.*See* BOUNDARIES AND FENCES.**FERÆ NATURÆ.***See* ANIMALS.**FEROCIOUS ANIMAL.***See* ANIMALS ; NEGLIGENCE.**FERRIES.**

[No paragraphs in this vol. of the Digest.]

**FERTILIZERS AND
FEEDING STUFFS.***See* AGRICULTURE.**FIERI FACIAS.***See* EXECUTION ; PRACTICE AND PROCEDURE.**FINES.***See* COPYHOLDS ; REAL PROPERTY.**FIRE, ESCAPE FROM.***See* FACTORIES AND WORKSHOPS.**FIRE, LIABILITY FOR.***See* NEGLIGENCE ; RAILWAYS.**FIREARMS.***See* CRIMINAL LAW.**FIRE BRIGADE.***See* PUBLIC HEALTH.**FIRE INSURANCE.***See* INSURANCE.**FIRST FRUITS.***See* ECCLESIASTICAL LAW.**FISHERIES.**

	COL.
I. UNLAWFUL ANGLING	222
[No paragraphs in this vol. of the Digest.]	
II. FISHING RIGHTS	222
III. SALMON FISHERY ACTS.	223
(a) Fishery Districts	223
[No paragraphs in this vol. of the Digest.]	
(b) Illegal Instruments	223
(c) Offences Generally	224
IV. OYSTER BEDS	224
V. SEA FISHERIES	224
[No paragraphs in this vol. of the Digest.]	

See also CHARITIES, No. 5.**I. UNLAWFUL ANGLING.**

[No paragraphs in this vol. of the Digest.]

II. FISHING RIGHTS.*See also* DEPENDENCIES, No. 25.

1. *Prescription in a Que Estate*—Profit à Prendre in Alieno Solo—*Presumption of Legal Origin*.]—A prescription in a *que* estate for a *profit à prendre in alieno solo* without stint and for commercial purposes is unknown to the law.

Freeholders in parishes adjoining the river Wye had been in the habit of fishing a non-tidal portion of the river for centuries, not by stealth or indulgence, but openly, continuously, as of right and without interruption, not merely for sport or pleasure, but commercially, in order to sell the fish and make a living by it. Riparian proprietors claiming to be owners of the bed of the river brought an action of trespass against the freeholders for fishing.

HELD (by Lords Halsbury, Macnaghten, Gorell, and Kinnear, Lord Loreburn, L.C., and Lords Ashbourne and Shaw dissenting)—that a legal origin for the right claimed by the freeholders could not be presumed, and that the action lay.

II. Fishing Rights—Continued.

Decision of C. A. ([1908] 1 Ch. 230; 77 L. J. Ch. 111; 98 L. T. 236; 21 T. L. R. 105) affirmed.

HARRIS v. EARL OF CHESTERFIELD, [1911] A. C. 623; 80 L. J. Ch. 626; 105 L. T. 453; 27 T. L. R. 518; 55 Sol. Jo. 686—H. L.

2. Navigable Non-tidal Lake Public User Prescription - Evidence - Crown Grants.—No right can exist in the public to fish in the waters of an inland non-tidal lake.

In an action by the respondents against the appellants claiming the exclusive right of fishing for eels in Lough Neagh grants by the Crown to the respondents' predecessors in 1605 and later were put in and evidence was given as to the receipt of rents by those predecessors from their lessees of the fishery. There was also evidence that the public had for centuries as of right and without interruption fished for eels in Lough Neagh, which was non-tidal.

HELD (by Lords Halsbury, Ashbourne, Macnaghten, and Dunedin, Lord Loreburn, L.C., and Lords Shaw and Robson dissenting)—that the respondents were entitled to the exclusive right claimed and to an injunction restraining the appellants from fishing.

Decision of C. A., Ireland ([1909] 1 I. R. 237), affirmed.

JOHNSTON v. O'NEILL, [1911] A. C. 552; 81 L. J. P. C. 17; 105 L. T. 587; 27 T. L. R. 545; 55 Sol. Jo. 686—H. L. (I.).

3. Canal—Reservation to Landowners of Right to Fish—Right to Use Towing Path—Right Appurtenant or in Gross—Right Passing Under General Words in Conveyance.—By a private Canal Act it was provided that the owners of land through which the canal was made should be entitled to a right of fishery in the canal, but so that the towing path should not be thereby prejudiced or obstructed. Part of such land was in 1845 conveyed to a purchaser, who leased the fishery to a club, of which the defendant was a member.

HELD—that the right to fish carried with it the right to use the towing path.

HELD ALSO—that the fishery was a fishery in gross and did not therefore pass under the general words in the conveyance of 1845.

Harris v. Earl of Chesterfield (*supra*) applied.

STAFFORDSHIRE AND WORCESTERSHIRE CANAL [NAVIGATION v. BRADLEY, [1911] W. N. 235; 56 Sol. Jo. 91—Eve, J.

III. SALMON FISHERY ACTS.

(a) Fishery Districts.

[No paragraphs in this vol. of the Digest.]

(b) Illegal Instruments.

4. "Using Net"—Having Net in Boat—Net Not Actually Put in Water—Salmon Fishery Act,

1865 (28 & 29 Vict. c. 121), s. 36.]—To constitute the offence of using a net for catching salmon without a licence, it is not necessary to prove that it was actually put in the water, but it is sufficient to show that the person charged had a net in a boat for the purpose of catching salmon with it.

MOSES v. RAYWOOD, [1911] 2 K. B. 271; 80 L. J. K. B. 823; 105 L. T. 76; 75 J. P. 263—Div. Ct.

(c) Offences generally.

See No. 4, *supra*.

IV. OYSTER BEDS.

5. Ship—Wreck—Ship Placed on Oyster Bed—Directions of Officer of Medway Conservancy Board—Liability of Board for Damage to Oyster Bed—Liability of Owner of Ship.—A vessel took the ground in the river Medway and she was, by the directions of the Medway Conservancy Board's harbour-master, removed to a place where she could be repaired. The harbour-master was in charge of the operation of removing her, and, under his directions, she was put ashore at a spot where there were oyster beds leased to the plaintiff. The vessel remained in that position for some time after the owner had notice of the existence of the oyster beds. In an action against the Medway Conservancy Board and the owner of the vessel in respect of the damage done to the oyster beds:—

HELD—(1) that the Medway Conservancy Board were liable for the act of their harbour-master in directing the vessel to be put where she was; but (2) that the owner of the vessel was not liable, as without the harbour-master authority he could not have moved the vessel from the place where she was directed by that officer to be put.

THE "BIEN," [1911] P. 40; 80 L. J. P. 59; [104 L. T. 42; 27 T. L. R. 9; 11 Asp. M. C. 558—Deane, J.

V. SEA FISHERIES.

[No paragraphs in this vol. of the Digest.]

FIXTURES.

See AGRICULTURE; BILLS OF SALE; DISTRESS; LANDLORD AND TENANT; MORTGAGES; REAL PROPERTY AND CHATTELS REAL; SETTLEMENTS, No. 19.

FLOTSAM AND JETSAM.

See SHIPPING AND NAVIGATION.

FOOD AND DRUGS.

I. SALE OF FOOD AND DRUGS ACTS.	COL.
(a) Administration and Procedure	225
(b) Analysis	226
(c) Offences	227
(d) Taking Samples	227
(e) Warranties	229
II. SALE OF UNSOUND MEAT.	
(a) Generally	230
(b) In London	230
[No paragraphs in this vol. of the Digest.]	
III. SALE OF BREAD	231
IV. MARGARINE	231

See also MARKETS, No. 3.

I. SALE OF FOOD AND DRUGS ACTS.
(a) Administration and Procedure.
See also No. 10, <i>infra</i> .

1. *Limit of Time for Taking Proceedings—Continuing Warranty—Subsequent Delivery—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 20—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 20 (6).*—On August 9, 1910, the appellants, a firm of wholesale milk dealers, agreed to supply to a firm of retailers all the milk which they might require at one of their branches, and on the same date the appellants gave a written warranty as to the quality of all the milk which might thereafter be supplied by them to the retailers. On January 17, 1911, the appellants supplied milk under the contract which was not in accordance with the warranty, and on February 15, 1911, an information was laid charging the appellants with an offence under sect. 20, sub-sect. 6, of the Sale of Food and Drugs Act, 1899.

HELD—that the six months within which the information had to be laid ran from January 17, 1911, and that the proceedings were, therefore, commenced in time.

THOMAS, LD. v. HOUGHTON, [1911] 2 K. B. 959; [81 L. J. K. B. 21; 75 J. P. 523; 9 L. G. R. 1142—Div. Ct.

2. *Milk—Onus of Proving Milk Genuine—Absence of Neutral Testimony—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3—Sale of Milk Regulations, 1901, Art. 1.*—A farmer was charged with selling milk, which on analysis proved to be below the standard of quality required by the regulations. The accused, his mother, and servants gave evidence, which was believed but was uncorroborated by neutral testimony, to the effect that the milk had not been tampered with. The accused was convicted.

HELD—on appeal, that the evidence led on behalf of the accused was sufficient, without further corroboration, to overcome the presumption that the milk had been tampered with, and that the conviction must be quashed.

LAMONT v. RODGER, [1911] S. C. (J.) 24; 48 Sc. L. R. 60; 6 Adam, 328—Ct. of Justy.

Y.D.

3. *Milk—Skimmed Milk—"Genuine Milk"—Statutory Regulations of Board of Agriculture—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 4 (1).*—Milk in the expression "genuine milk, cream, butter or cheese" in sect. 4, sub-sect. 1, of the Sale of Food and Drugs Act, 1899, includes skimmed milk, and "genuine" there means merely "unadulterated." Accordingly regulations as to skimmed milk made under the section are not *ultra vires*.

GORDON v. LOVE, [1911] S. C. (J.) 75; 48 [Sc. L. R. 590; 6 Adam, 438—Ct. of Justy.

(b) Analysis.

See also No. 10, *infra*.

4. *Evidence of Adulteration—Lardine—Percentage of Water—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*—On a summons against the respondents for selling lardine not of the nature, substance, and quality demanded, the certificate of analysis showed that it contained 25 per cent. of water, and the analyst's observations attached to the certificate stated that it was adulterated with 25 per cent. of water. It was proved that lardine was a substitute for lard, and that lard contained no water, and that out of thirty-four samples of lard substitutes recently analysed by the analyst twenty-eight contained no water and six did contain water. The justices were of opinion that, there being no statutory standard for lardine, and the only evidence before them of any commercial standard being the composition of the samples recently analysed by the analyst, they were not justified in holding that lardine must contain no water; nor, in the absence of evidence as to the percentage of water in such samples, did they consider the evidence sufficient to enable them to fix a percentage of water permissible, and to say that what the respondents sold was not lardine; and they therefore dismissed the information.

HELD (Bray, J., dissenting)—that the case must be remitted to the justices in order that they might determine whether the article was adulterated or not.

RUDD v. SKELTON CO-OPERATIVE SOCIETY, [LD., 104 L. T. 919; 75 J. P. 326—Div. Ct.

5. *Sale of Milk—Analyst's Certificate—Sufficiency—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 21—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 4 (1)—Sale of Milk Regulations, 1901.*—A farmer, charged with selling skimmed milk which was not genuine, inasmuch as it did not contain 9 per cent. of milk solids as required by sect. 3 of the Sale of Milk Regulations, 1901, objected to the relevancy of the complaint on the ground that the analyst's certificate produced was unintelligible, that it did not state the "milk" solids, and did not show that any offence had been committed. The certificate stated—

"Solids not fat	7.35
Fat	1.31
Water	91.34
	100.00
Ash . . . . .	.59"

S

I. Sale of Food and Drugs Acts—Continued.

HELD—(1) that the certificate was quite clear; (2) that the omission of the word "milk" before "solids" was of no moment; (3) that the additional information as to "ash" did not affect the analysis, which showed a deficiency of solids.

GORDON v. LOVE [1911] S. C. (J.) 75; 48 Sc. [L. R. 590; 6 Adam, 438—Ct. of Justy.

(c) Offences.

6. *Sale of Milk—Complaint—Omission to State Article Asked for—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 4 (1)—Sale of Milk Regulations, 1901, r. 3.*—A farmer was charged with a breach of the Food and Drugs Acts and the Sale of Milk Regulations, 1901, in a complaint which stated that "in pursuance of a contract of sale" he had sent two butts of skimmed milk which was not genuine. Objection was taken that the complaint did not set out the article asked for, but only that supplied.

HELD—that it was quite clear what was the subject of sale, and objection repelled.

GORDON v. LOVE, [1911] S. C. (J.) 75; 48 Sc. [L. R. 590; 6 Adam, 438—Ct. of Justy.

7. *Milk—Nature, Substance and Quality Demanded by the Purchaser—Deficiency in Fat—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Milk (Ireland) Regulations, 1901.*—The appellant, a dealer in milk, sold to the respondent, inspector of food and drugs, milk which on analysis was found to be deficient in milk fat when compared with the legal limit for milk fat fixed at 3 per cent. in the Sale of Milk (Ireland) Regulations, 1901. The appellant was convicted under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling to the respondent milk not of the nature, substance and quality demanded by the purchaser, although the justices found as a fact that the milk supplied was as demanded—namely, a pint of new milk as produced by the proper and honest milking of healthy and well-fed cattle; that there had been no tampering with the milk, and that it was sold in the same condition as it came from the cow, and was of the nature, substance, and quality of new milk, and that the appellant neglected no precaution to procure that the produce of the cattle should be of the highest standard.

HELD—that the conviction could not be sustained.

Wolfenden v. McCulloch ((1905) 92 L. T. 857) followed.

O'DRISCOLL v. DOLAN, 45 I. L. T. 144—Div. [Ct., Ireland.

(d) Taking Samples.

8. *Milk—Sample Taken "in course of Delivery"—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3.*—The respondent, a milkman, drew milk from a can and delivered it to a customer who came out of her house with a jug to get it. He was

under contract to deliver to the customer pure milk from one cow. As soon as the customer received the milk she went back with it into her house and shut the door. The appellant, an inspector under the Sale of Food and Drugs Acts, then went to the respondent and bought some milk from the same can, being told by the respondent that the milk was diluted. The appellant then knocked at the door of the customer's house, and the door was opened by the customer, who still had the jug in her hand, and said that the milk in the jug was exactly as she had received it. The appellant took a sample from the milk in the jug and sent it, with the sample bought from the respondent, for analysis. The result of the analysis was the same as to each sample, both being adulterated with 30 per cent. of water. In a prosecution for selling to the customer milk which had been adulterated the justices held that the sample taken from the milk supplied to her had not been taken by the appellant while the milk was "in course of delivery" to the customer within sect. 3 of the Sale of Food and Drugs Act Amendment Act, 1879, and they accordingly dismissed the charge.

HELD (Lord Alverstone, C.J., dissenting)—that there was evidence upon which the justices could find that there was a complete delivery of the milk before the sample was taken by the appellant.

HELLIWEEL v. HASKINS, [1911] W. N. 129; [105 L. T. 438; 75 J. P. 435; 27 T. L. R. 463; 9 L. G. R. 1060—Div. Ct.

9. *Milk—Delivery in Several Barrels—Fair Sample—Analysis—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3.*—A dairyman, in implement of a contract, delivered to his customer a consignment of forty-two gallons of milk in six barrels, from which samples were taken for analysis by an inspector under the Sale of Food and Drugs Acts. The method of sampling was as follows: Four of the five barrels of eight gallons each were poured separately into a ten-gallon dish, being the largest dish available, and a sample of each taken; the last of the five barrels and the sixth barrel of two gallons were poured together into the dish and a sample of the ten gallons taken. The five samples thus obtained were then each separately analysed, and an average of the six results thus obtained was taken as representing the quality of the entire consignment.

HELD—that the method of sampling the milk, and of subsequently arriving at its quality, was fair and proper, and caused no prejudice to the accused.

LAMONT v. RODGER, [1911] S. C. (J.) 24; 48 [Sc. L. R. 60; 6 Adam, 328—Ct. of Justy.

10. *Adulterated Butter—Supplied on Contract—Analyst's Certificate—Identity of Sample Sent by Purchaser and Received by Analyst—Registered Parcel—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 16, 18, 21.*—A. supplied butter to D., a workhouse

I. Sale of Food and Drugs Acts—Continued.

master. D. made up a sample of about half a pound of the butter and marked "butter," and gave it to X. to post to the public analyst. It was not sent by registered post. On the following day the analyst received a package purporting to come from D. marked "butter," and containing about six fluid ounces. The analyst's certificate stated that he had received the sample from D., and that it was composed almost entirely of fats foreign to butter. It did not state the percentage of butter fats and foreign fats found in the sample. Under sect. 16 of the Sale of Food and Drugs Act, 1875, the certificate of the analyst is evidence of the facts therein stated.

HELD—that there was evidence before the magistrates that the sample sent by D. and the sample analysed by the analyst were identical; that, although the analyst's certificate did not follow the form of the schedule to the Act, it was sufficient, as its meaning was that practically the material was not butter; and that sect. 16 of the Act was an enabling section, and did not prevent evidence being given that the parcel had been sent to the analyst in a manner other than by registered post.

AUSTIN v. GUARDIANS OF DUNSHAUGHLIN
[UNION, 45 I. L. T. 213—Div. Ct., Ireland.

(e) Warranties.

11. Liability of Limited Company for giving False Warranty—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 20 (6).]—There is nothing in sect. 20 (6) of the Sale of Food and Drugs Act, 1899, to exempt a limited company which has given a false warranty in respect of an article of food from liability to the punishment imposed by that section.

CHUTER v. FREETH AND POCKOCK, LD., [1911]
[2 K. B. 832; 80 L. J. K. B. 1322; 105 L. T. 238; 75 J. P. 430; 27 T. L. R. 467; 9 L. G. R. 1055—Div. Ct.

12. Person giving Warranty having Reason to Believe that Statements in Warranty were True—Evidence—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 20 (6).]—The appellants, wholesale dealers in milk, who purchased their milk from farmers in the country, were charged with having given to a purchaser from them a false warranty in writing. The milk in respect of which they gave the warranty in question was received from a farmer with whom they had dealt for three years, and during that time nothing had occurred to lead them to suppose that the milk was not of the proper standard. The farmer had given the appellants a warranty with the milk in question. The appellants having been convicted:—

HELD—on the facts, that when the appellants gave the warranty they had reason to believe that the statements contained therein were true within sect. 20, sub-sect. 6. of the Sale of Food and Drugs Act, 1899, and that the conviction must therefore be quashed.

DAIRY SUPPLY CO., LD. v. HOUGHTON, 28
[T. L. R. 94—Div. Ct.

II. SALE OF UNSOUND MEAT.**(a) Generally.**

13. Prosecution by Police without Consent of Attorney-General—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117, 253.]—An officer of police cannot, without the consent of the Attorney-General, institute proceedings under sect. 117 of the Public Health Act, 1875, against a person for exposing unsound meat for sale, or having it in his possession for the purpose of preparation for sale.

DODD v. PEARSON, [1911] 2 K. B. 383; 80
[L. J. K. B. 927; 105 L. T. 108; 75 J. P. 343; 27 T. L. R. 376; 9 L. G. R. 646—Div. Ct.

14. Meat Seized and Condemned after Passing out of Possession of Seller—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117—*Public Health Acts Amendment Act, 1890* (53 & 54 Vict. c. 59), s. 28.]—The appellant, a butcher, sold meat to a purchaser. On the following day the meat was inspected while in the possession of the purchaser and seized, and subsequently condemned by a magistrate as unfit for the food of man. The appellant was then charged under sect. 117 of the Public Health Act, 1875, with having sold the meat for the food of man when it was unsound and unfit for the food of man, and was convicted.

HELD—that by virtue of sect. 28 of the Public Health Acts Amendment Act, 1890, the conviction was right, although the seizure of the meat was elsewhere than on the premises of the appellant.

SALT v. TOMLINSON, [1911] 2 K. B. 391; 80
[L. J. K. B. 896; 105 L. T. 31; 75 J. P. 398; 27 T. L. R. 427; 9 L. G. R. 822—Div. Ct.

15. Possession of Unsound Meat—Seizure on Wagon on Premises Belonging to Another—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117.]—Meat was seized by an inspector in a wagon on premises not occupied by the appellant and was condemned by a justice as unfit for food. It had been delivered at certain regimental barracks under a contract with the appellant and had been rejected as unsound. The appellant admitted to the inspector after the seizure that the meat belonged to him, declaring that it was perfectly fit for food. He had also telegraphed to the medical officer of health to keep the meat for further examination on his behalf and had subsequently told him that it belonged to him and that he would have been prepared to sell it if it had not been seized.

HELD—that on such evidence the justices were justified in convicting the appellant under sect. 117 of the Public Health Act, 1875, as having had the meat in his possession at the time of seizure.

BULL v. LORD, 9 L. G. R. 829—Div. Ct.

(b) In London.

[No paragraphs in this vol. of the Digest.]

III. SALE OF BREAD.

16. *Sale by Weight—Weights suited to Weigh Bread not Carried—Bread Act, 1836* (6 & 7 Will. 4, c. 37), s. 7.]—Sect. 7 of the Bread Act, 1836, imposes upon those who carry out bread for sale in any cart or other carriage the obligation of carrying weights which are properly suited to weigh the bread such persons actually carry for sale and purport to sell.

TURNER v. HOLDER, [1911] 2 K. B. 562; 80 [L. J. K. B. 895; 105 L. T. 34; 75 J. P. 445; 27 T. L. R. 472; 9 L. G. R. 979—Div. Ct.

IV. MARGARINE.

17. *Sale in Paper Wrapper—Fancy Name Approved by Board of Agriculture—Printed on Wrapper—"Karmo Margarine"—Margarine Act, 1887* (50 & 51 Vict. c. 29), s. 6—*Sale of Food and Drugs Act, 1899* (62 & 63 Vict. c. 51), s. 6—*Butter and Margarine Act, 1907* (7 Edw. 7, c. 21), s. 8.]—Sect. 8 of the Butter and Margarine Act, 1907, which provides that a person dealing in margarine shall be guilty of an offence under that Act if "in any wrapper" enclosing margarine he describes it by any name other than "margarine" or a name combining the word "margarine" with a fancy or other descriptive name approved by the Board of Agriculture and Fisheries, has not by implication repealed the provisions of sect. 6 of the Margarine Act, 1887, as amended by the Sale of Food and Drugs Act, 1899, to the effect that margarine when sold by retail shall only be delivered, save in a package duly branded, in a paper wrapper "on which" shall be printed the word "margarine," "and no other printed matter shall appear on the wrapper."

A person sold a kind of margarine called "Karmo," a name approved by the Board of Agriculture and Fisheries under sect. 8 of the Butter and Margarine Act, 1907, in a paper wrapper on which the words "Karmo Margarine" were printed.

HELD—that he was rightly convicted of an offence under sect. 6 of the Margarine Act, 1887, as amended by sect. 6 of the Sale of Food and Drugs Act, 1899.

WILLIAMS v. BAKER, [1911] 1 K. B. 566; 80 [L. J. K. B. 545; 104 L. T. 178; 75 J. P. 89; 9 L. G. R. 178—Div. Ct.

FOREIGN ATTACHMENT.

See PRACTICE AND PROCEDURE.

FOREIGN ENLISTMENT.

See CRIMINAL LAW.

FOREIGN JUDGMENT.

See CONFLICT OF LAWS, No. 6.

FOREIGN LAW AND FOREIGNERS.

See CONFLICT OF LAWS.

FORESHORE.

See WATER AND WATERCOURSES.

FORFEITURE.

See CRIMINAL LAW; FISHERIES; LANDLORD AND TENANT; REAL PROPERTY; SETTLEMENTS; WILLS.

FORGERY.

See BANKERS AND BANKING; CRIMINAL LAW.

FRANCHISE.

See ELECTIONS; FERRIES; FISHERIES; MARKETS AND FAIRS; REAL PROPERTY.

FRAUD.

See ACTION; CONTRACT; LIMITATION OF ACTIONS; MISREPRESENTATION AND FRAUD; PLEADING; TRUSTS; WILLS.

FRAUDS, STATUTE OF.

See CONTRACT; SALE OF GOODS; SALE OF LAND.

FRAUDULENT AND VOIDABLE CONVEYANCES.

See also BANKRUPTCY; SETTLEMENTS, No. 26.

1. *Bankruptcy—Partnership—Assignment of Partnership Business to Company—Device to Defeat and Delay Creditors of Partner—Statute 13 Eliz. c. 5*.—H. & Co. obtained judgment against G., a former partner, restraining him from carrying on a certain business which he was then carrying on in partnership with J. Two days later G. and J. entered into an agreement under which their partnership business was subsequently transferred to a company formed for the purpose of taking over the business. G. received shares in the company as part of the

Fraudulent and Voidable Conveyances—Continued.

purchase price of the business, and shortly afterwards transferred them to his wife. Within a year G. was adjudicated bankrupt on his own petition.

HELD—on the evidence, that the agreement entered into by G. and J., who knew all about G.'s position, was intended to defeat and delay the creditors of G., and was fraudulent and void under the statute of 13 Eliz. c. 5.

GONVILLE'S TRUSTEE v. PATENT CARAMEL CO.,
[LD., [1911] W. N. 241 ; 46 L. J. N. C. 754—
Phillimore, J.]

2. Voluntary Conveyance—Whether Fraud on Creditors—Existing Creditors Paid Off—Future Creditor.—In the absence of any express intention to defraud, a voluntary deed will not be set aside at the instance of a creditor whose debt comes into existence after its date, if all creditors existing at the date of the deed have been paid off.
IN RE KELLEHER, [1911] 2 I. R. 1—C. A.,
[Ireland.]

FREEBOARD.

See SHIPPING AND NAVIGATION.

FREIGHT.

See SHIPPING AND NAVIGATION.

FRIENDLY SOCIETIES.

COL.

I. REGISTERED SOCIETIES.

(a) Disputes	233
(b) Dissolution	234
[No paragraphs in this vol. of the Digest.]	
(c) Nomination of Life Policy	234
[No paragraphs in this vol. of the Digest.]	
(d) Officers	234
(e) Rules	235
(f) Generally	235

II. COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES . 236
[No paragraphs in this vol. of the Digest.]

III. UNREGISTERED SOCIETIES . 236
[No paragraphs in this vol. of the Digest.]
See also INSURANCE, No. 9.

I. REGISTERED SOCIETIES.

(a) Disputes.

1. Action in County Court to Recover Benefit—Jurisdiction of County Court Judge—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68.—An action was brought by the plaintiff, the widow of a member of a friendly society, against the defendant, who

was the statutory officer of the society, to recover a benefit to which she claimed to be entitled under the rules. Rule 20 of the society's rules of 1908 provided that disputes between members or persons claiming through or on account of a member and the society should be decided by arbitration, and prescribed certain formalities to be observed. It further provided that each dispute should be decided by three arbitrators, the first elected by the claimant, the second by the society, and the third to be a county court judge or other person agreed on by the parties, who should act as umpire. The Friendly Societies Act, 1896, s. 68 (6), provides that "Where the rules [of a friendly society] contain no direction as to disputes, or where no decision is made on a dispute within forty days after the application to the society . . . for a reference under its rules, the member or person aggrieved may apply either to the county court or to a court of summary jurisdiction and the court to which application is made may hear and determine the matter in dispute." On March 11th, 1910, the plaintiff applied for benefit under the rules. On April 2nd the society passed a resolution refusing the plaintiff's application as being contrary to rule. On April 18th the plaintiff made an application for arbitration under the rules. This was assented to by the society, but the parties were unable to agree as to an umpire, and, after the expiration of forty days, the plaintiff in January, 1911, commenced proceedings in the county court by virtue of sect. 68 (6) of the Friendly Societies Act, 1896. In September, 1910, the society had amended its rules, and by rule 20 as so amended it was provided that disputes should in the first instance be referred to the general committee, from whose decision there should be an appeal to an appeal committee. It was contended before the learned judge that, the plaintiff not having complied with these regulations, he had no jurisdiction to entertain the action. To this contention he gave effect and declined to hear the case.

HELD—that the learned judge was wrong, and that the alteration in the rule could not affect the right of the plaintiff, which had become vested, to go to the county court, and that the learned judge accordingly had jurisdiction to try the case.

RITSON v. DOBSON, 104 L. T. 808—Div. Ct.

(b) Dissolution.

[No paragraphs in this vol. of the Digest.]

(c) Nomination of Life Policy.

[No paragraphs in this vol. of the Digest.]

(d) Officers.

2. Misapplication of Property of Society—Order for Repayment—Time for Taking Proceedings—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 86, 87 (3)—Friendly Societies Act, 1908 (8 Edw. 7, c. 32), s. 9.
By sect. 87, sub-sect. 3, of the Friendly

1. Registered Societies—Continued.

Societies Act, 1896, if any person wilfully applies any property of the society to an unauthorised purpose, he is liable on complaint to be summarily convicted and fined, and by sect. 9 of the Friendly Societies Act, 1908, where on such a complaint it is not proved that he acted with fraudulent intent, he may be ordered to repay any sum of money applied improperly, but shall not be liable to conviction.

HELD—that the limit of six months imposed by sect. 11 of the Summary Jurisdiction Act, 1848, as regards the time within which a complaint or information must be made, is a bar to summary proceedings for an order under the Friendly Societies Act, 1896, for repayment of a sum of money which was misapplied more than six months before the laying of the information.

MACKIE *v.* FOX, 105 L. T. 523; 75 J. P. 470 [Div. Ct.]

(e) Rules.

See also No. 1, *supra*.

3. *Alteration of Rules—Transfer of Sum to Pension Fund—Validity—Omission to Comply with Formalities.*—A friendly society, at a general meeting specially called, altered its rules for the purpose of authorising a transfer of money from the actuarial surplus to a pension fund, and passed a resolution that £50,000 should be so transferred. There was nothing in the unaltered rules which prohibited what was done at the meeting. It was necessary, under the rules of the society, that a new or altered rule should be registered before it was acted upon. The above alteration was not registered till after the resolution transferring the funds had been passed.

HELD—that, there being nothing in the rules to prevent the society from altering the rules as it had done, and the provision of pensions being within the objects and statutory constitution of the society, such alteration of the rules was good.

HELD ALSO—that a failure to comply with a formality such as registering the alteration of the rules before acting upon the rules as altered was a matter of which the Court would only take notice at the instance of a clear majority of the members of the society.

KIRKSOPP *v.* HEIGHTON, 28 T. L. R. 129; 56 [Sol. Jo. 161—Warrington, J.]

(f) Generally.

4. *Conversion into Limited Company—Objects of Company—Exceeding the Objects of the Society—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 8, 71.*—Where a friendly society registered under the Friendly Societies Act, 1896, has been converted into and registered as a company limited by guarantee under a memorandum and articles of association which greatly extend the objects of the society as restricted by the Friendly Societies Act, 1896, the company

cannot be restrained from exercising its powers under such memorandum at the instance of a shareholder of the company.

Blythe v. Birtley ([1910] 1 Ch. 228) distinguished.

Decision of Eve, J. (102 L. T. 276; 26 T. L. R. 357; 54 Sol. Jo. 361) affirmed.

MCGLADE *v.* ROYAL LONDON MUTUAL [INSURANCE SOCIETY, LD., [1910] 2 Ch. 169; 79 L. J. Ch. 631; 103 L. T. 155; 26 T. L. R. 471; 54 Sol. Jo. 505; 17 Manson, 358—C. A.]

See S. C. under COMPANIES, XVII. (a).

5. *Conversion into Company—Consent of Members—Resolution for Conversion Passed at a Meeting of “Delegates” — Alteration of Objects—Friendly Societies Act, 1896 (59 & 50 Vict. c. 25), ss. 71 (1), 74, 106.*—By the rules of a registered friendly society it was provided that meetings for the “management of the society” should consist of “delegates” elected by the members.

HELD—that a resolution for the conversion of the society into a limited company, in terms of sect. 71 of the Friendly Societies Act, 1896, passed by a general meeting of “delegates,” was *ultra vires*, in respect that under that Act a resolution for conversion could only be carried by a certain majority of the members of the society at a general meeting of members, and that that requirement was not affected by the rule of the society providing that meetings should consist of “delegates.”

HELD, accordingly—that a scheme for the conversion of a friendly society into a company, the memorandum of association of which permitted (a) the distribution of surplus assets among members, who under the rules of the society would have had no right to participate in that surplus, and (b) payments to employees of sums out of capital which were unauthorised by the society’s rules, was *ultra vires*.

Blythe v. Birtley ([1910] 1 Ch. 228) followed.

WILKINSON *v.* CITY OF GLASGOW FRIENDLY [SOCIETY, [1911] S. C. 476; 48 Sc. L. R. 504—Ct. of Sess.]

II. COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES.

[No paragraphs in this vol. of the Digest.]

III. UNREGISTERED SOCIETIES.

[No paragraphs in this vol. of the Digest.]

FUGITIVE OFFENDERS.

See EXTRADITION AND FUGITIVE OFFENDERS.

GAME.

I. GAME.	COL.
(a) Ground Game	237
[No paragraphs in this vol. of the Digest.]	

(b) Licences	237
(c) Trespass and Poaching	237

II. SPORTING RIGHTS, ETC.	238
-----------------------------------	-----

I. GAME.**(a) Ground Game.**

[No paragraphs in this vol. of the Digest.]

(b) Licences.

1. *Tame Pheasants Bought for Breeding Purpose—Seller and Purchaser not Licensed to Deal in Game—Liability to Penalty—Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 27.*—The word "game" in sect. 27 of the Game Act, 1831, applies to live as well as dead game; it applies also to game which has never been wild—for example, to pheasants reared in captivity and kept for breeding purposes. If, therefore, a person who is not licensed to deal in game purchases tame pheasants for breeding purposes from a person not licensed to deal in game he commits an offence against sect. 27 of the Act.

COOK *v.* TREVENER, [1911] 1 K. B. 9; 80 L. J. [K. B. 118; 103 L. T. 725; 74 J. P. 469; 27 T. L. R. 8—Div. Ct.]

(c) Trespass and Poaching.

2. *"Entering or being upon" the Land—Absence of Personal Entry—Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 30.*—By sect. 30 of the Game Act, 1831, "If any person whatsoever shall commit any trespass by entering or being . . . upon any land in search or pursuit of game" he shall be guilty of an offence.

HELD—that a personal entry upon the land by the defendant is necessary to satisfy the terms of the section, and that it is not enough to send a dog on to the land in search or pursuit of game.

Dicta in R. v. Pratt ((1855) 4 E. & B. 860) followed.

PRATT *v.* MARTIN, [1911] 2 K. B. 90; 80 [L. J. K. B. 711; 105 L. T. 49; 75 J. P. 328; 27 T. L. R. 377—Div. Ct.]

3. *Unlawful Possession of Eggs—Evidence—Poaching Prevention Act, 1862 (25 & 26 Vict. c. 114), s. 2.*—The appellant having been summoned for being in possession of game eggs unlawfully obtained, evidence was given on behalf of the prosecution that a constable, having seen the appellant in the month of May under circumstances of suspicion with other men, searched the appellant's cart and found a large number of game eggs which the appellant stated came off his own farm. No evidence was called on behalf of the appellant.

HELD—that the appellant was rightly convicted of an offence within sect. 2 of the Poaching Prevention Act, 1862.

STONE *v.* MARJORAM, 101 L. T. 569; 73 [J. P. 498; *sub nom.* STONE *v.* MARJORAM, 22 Cox, C. C. 198—Div. Ct.]

4. *Night Poaching—Previous Convictions—"So offending" a Third Time—Night Poaching Act, 1828 (9 Geo. 4, c. 69), ss. 1, 2.*—*"Land Used for Breeding or Keeping Rabbits"*—*Agricultural Field—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 17.*—A conviction under sect. 2 of the Night Poaching Act, 1828, cannot be treated as a previous conviction under sect. 1 of that Act.

R. v. Lines ([1902] 1 K. B. 199) applied.

Ordinary agricultural land is not land used for the breeding or keeping of rabbits merely because rabbits are tolerated there and breed in the hedgerows.

R. v. McLAUCHLAN, 75 J. P. 8—Qr. Sess.

II. SPORTING RIGHTS.

See also FISHERIES, II.

5. *Trespass—Right of Tenant of Sporting Rights to Check Progress of Fire by Burning Strips of Heather—Necessity of Stop.*—The defendant was a gamekeeper employed by the tenant of sporting rights over heath land leased from the plaintiff. A fire having broken out on the heath, the defendant sought to check its progress by setting fire to the heather in certain places with the intention of making bare patches, so that when the fire reached them there would be nothing to burn and the heather to leeward would be saved. At the trial of an action against the defendant for damages the following questions were left to the jury: "Was the method adopted by the defendant in fact necessary for the protection of his master's property?" and, "If not, was it reasonably necessary in the circumstances?" The jury answered the first question in the negative and the second in the affirmative.

HELD (Vaughan Williams, L.J., dissenting)—that upon these findings the defendant was entitled to judgment inasmuch as their effect was that in all the circumstances the method adopted by the defendant for the protection of his master's property was necessary to meet the threatened danger, and was reasonably used.

Decision of Div. Ct. ([1911] 2 K. B. 837; 80 L. J. K. B. 1008; 104 L. T. 718; 27 T. L. R. 396) reversed.

COPE *v.* SHARPE, 132 L. T. Jo. 178; *Times*, [December 20th, 1911—C. A.]

See S.C. under TRESPASS.

GAMING AND WAGERING.

I. GAMING CONTRACTS	COL. 238
II. GAMES AND GAMING HOUSES	239
III. BETTING HOUSES AND BETTING	240
IV. LOTTERIES	243

I. GAMING CONTRACTS.

See also BANKRUPTCY, No. 23.

1. *Betting—Forbearance to Make Defendant's Default Public—New Contract—Gaming Acts*

I. Gaming Contracts *Continued.*

1835 (5 & 6 Will. 4, c. 41), s. 1, and 1845 (8 & 9 Vict. c. 109), s. 18.]—The plaintiff and defendant were bookmakers, and as the result of certain betting transactions between them a sum of £30 10s. was due from the defendant to the plaintiff. In an action to recover this amount, the plaintiff stated that when the debt became due the defendant asked for time to pay, and requested that the matter might be kept absolutely confidential, as if it got about it would do him a lot of harm. The plaintiff agreed to give defendant time, and promised to keep the matter confidential. He stated in his evidence that, if the matter had got about, the defendant would have been finished as a bookmaker. The county court judge gave judgment for the plaintiff, holding that a new contract had been entered into between the parties by which the plaintiff forbore to proclaim the defendant a defaulter in consideration of the defendant's promise to pay the debt at a future time.

HELD—that there was evidence upon which the county court judge could come to that conclusion.

Decision of Div. Ct. (103 L. T. 461; 27 T. L. R. 7) affirmed.

WILSON v. CONOLLY, 104 L. T. 94; 27 T. L. R. [212—C. A.]

2. *Deposit of Money to be Used for Speculation in Stocks—Deposit to be Repaid if No Profit Made—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.*—The defendant sent out circulars in which he stated that if the persons receiving them would contribute certain sums to a "trust," he would operate in specified stocks, and if at the end of 90 days those stocks stood at a higher figure than at the beginning, he would divide the profit, less 10 per cent., among the contributors, but if there were no profits he would return the original subscription in full. The plaintiff paid sums to the defendant in respect of two "trusts" on the terms of the circulars, and profits having been made on one of the "trusts," he sued the defendant to recover same and also the sum deposited on the other "trust" which had not shown a profit.

HELD—that the loss of interest on the sums deposited was a loss sufficient to make the contract between the parties a wagering contract within sect. 18 of the Gaming Act, 1845, and that the plaintiff was therefore not entitled to recover.

Definition of gaming and wagering by Cotton, L.J., in *Thacker v. Hardy* (1878) 4 Q. B. D. 685, 695) considered.

RICHARDS v. STARCK, [1911] 1 K. B. 296; 80 [L. J. K. B. 213; 103 L. T. 813; 27 T. L. R. 29—Channell, J.]

II. GAMES AND GAMING HOUSES.

3. *Justices—Common Gaming-house—Lottery Acts—Game—Bank—Unequal Chances—Lotteries Act, 1806 (46 Geo. 3, c. 148), s. 59—Gaming Act, 1845 (8 & 9 Vict. c. 109).*—The defendant carried on a sale of goods by means of a "wheel of fortune" in a house open to the public. He was prosecuted under the

Gaming Act, 1845, for keeping a common gaming-house.

HELD—that the defendant was carrying on a lottery, and that a lottery was a "game"; that the offence charged was a game under the Act; and that it was not necessary that the prosecution should be at the suit of the Attorney-General.

MUNRO v. KELLY, 45 I. L. T. 179—Div. Ct., [Ireland.]

III. BETTING HOUSES AND BETTING.

See also No. 1, *supra*.

4. *Betting—Racecourse—Field Adapted for Annual Sports and Horse-races—Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 2.*—A field, not registered as a racecourse and not permanently laid out or used as a racecourse, but adapted for the occasion of an annual athletic sports and horse-races meeting, is not "ground used for the purpose of a racecourse for racing with horses" within the meaning of the exemption from the Street Betting Act, 1906, contained in sect. 2 of the Act.

STEAD v. AYKROYD, [1911] 1 K. B. 57; 80 [L. J. K. B. 78; 103 L. T. 727; 74 J. P. 482—Div. Ct.]

5. *Using House for Purpose of Receiving Bets on Horse-races—Evidence of User—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.*—The appellant was a bookmaker, and a letter was sent to his premises stating that the writer wished to open a deposit account with the appellant, and on hearing from him would forward £5; the writer added that none of his commissions would exceed the amount without a further remittance. The appellant replied, enclosing a book of rules, and saying that "on receipt of yours, as suggested, I will place you on my list of clients." The money was thereafter sent to the appellant in the form of postal orders. Bets were made by the appellant on behalf of the writer of the letter, and a day or two later the appellant's premises were raided, when books of account, showing betting transactions and about 100 betting slips, were found. The appellant was convicted upon an indictment under the Betting Act, 1853, for using the premises for the purpose of moneys being received by him as and for the consideration for certain assurances, undertakings, promises, and agreements to pay thereafter certain moneys upon certain events and contingencies of and relating to horse-races.

HELD—that there was evidence upon which the jury could convict the appellant.

Semble, the receipt of a document which can be turned into money is the receipt of money within sect. 1 of the Betting Act, 1853.

R. v. MORTIMER, [1911] 1 K. B. 70; 80 L. J. [K. B. 76; 103 L. T. 910; 75 J. P. 37; 27 T. L. R. 17; 22 Cox, C. C. 359—C. C. A.]

6. *Betting—Loitering in Street for Purpose of Betting—Distributing Handbills relating to Betting—Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 1.*—The respondent was charged

III. Betting Houses and Betting.—*Continued.*

under the Street Betting Act, 1906, with having loitered in a certain highway for the purpose of betting. It was proved that the respondent was distributing in a public street handbills which contained offers by bookmakers to receive bets. The magistrate, being of opinion that the distribution of such handbills in the street did not come within the terms of the Act, dismissed the charge.

HELD—that the magistrate ought to have convicted, inasmuch as the respondent in distributing the handbills was doing a substantial part of the business of betting by indicating to the public the terms on which the bookmakers were prepared to bet and the means by which the bets could be carried out.

DUNNING v. SWETMAN, [1909] 1 K. B. 774; [78 L. J. K. B. 359; 100 L. T. 604; 73 J. P. 191; 25 T. L. R. 302; 22 Cox, C. C. 93—Div. Ct.

7. *Suffering Gaming on Licensed Premises—Conviction of Bookmaker for Using Licensed Premises for Betting—Subsequent Proceedings against Licensee—Admissibility of Conviction of Bookmaker—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 79.*—On May 4th, 1911, a bookmaker was convicted at petty sessions for having unlawfully used the bar parlour of the appellant's licensed premises on April 29th, 1911, for betting with persons resorting thereto. On May 15th, 1911, the appellant was summoned for having suffered his premises to be so used for betting on April 29th, 1911. At the hearing of the charge against the appellant he desired to raise the question whether betting had in fact taken place on April 29th, in addition to the question whether he had suffered betting to take place, but the justices ruled that they were bound by the conviction of the bookmaker on May 4th to hold that betting had taken place on the premises on April 29th, and that the appellant could not, in view of that conviction, seek to show that no betting had taken place on that date. The justices having convicted the appellant:—

HELD—that evidence of the conviction of the bookmaker on May 4th was wrongly admitted and that the conviction of the appellant must be quashed.

TAYLOR v. WILSON, 28 T. L. R. 97—Div. Ct.

8. *Search Warrant—Suspected Betting House—Seizure of Unopened Letters—Competency—Application for Warrant to Open Letters—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 11.*—Under sect. 11 of the Betting Act, 1853, any justice of the peace may upon a sworn complaint give authority by special warrant to a constable to enter a house suspected of being used as a betting house and to seize “all lists, cards, or other documents relating to racing or betting” found in such house.

On an application, which stated that certain premises were suspected of being used as a betting house, a search warrant was granted under the above section, authorising, *inter alia*, the seizure of “all letters” found therein.

In execution of the warrant a number of unopened letters were seized on the premises, and on a second application a day was appointed on which these letters were to be opened and inventoried.

HELD—that the warrant was incompetent in so far as it authorised the seizure of letters, and that an order for opening the letters and inventorying their contents could not be made.

M'LAUCHLAN v. RENTON, [1911] S. C. (J.) [12; 48 Sc. L. R. 96; 6 Adam, 378—Ct. of Justy.

9. *“Betting House”—Transactions by Post.*—A bookmaker occupied premises in Edinburgh at which he carried on his business. No persons resorted to the premises for the purpose of betting, the bookmaker communicating with his customers only by letter, telegram, or telephone. No money was deposited when the bet was made, but accounts were rendered weekly, and the balance remitted to or by the bookmaker according to the result of the events on which the bets were made and the state of the customer's account.

HELD—that the premises were not kept as a “betting house” within the meaning of sect. 284 of the Edinburgh Municipal and Police Act, 1879.

TRAYNOR v. MACPHERSON, [1911] S. C. (J.) 54; [48 Sc. L. R. 92; 6 Adam, 407—Ct. of Justy.

10. *“Public Place”—Railway Station Platform—Construction of Statute—Prevention of Gaming (Scotland) Act, 1869 (32 & 33 Vict. c. 87), s. 3.*—The platform of a railway station is a “public place” within the meaning of that expression in the words “in any public place or in any grounds open to the public or in any public conveyance” in sect. 3 of the Prevention of Gaming (Scotland) Act, 1869.

Observations on the rules to be followed in construing statutes.

WOODS v. LINDSAY, [1910] S. C. (J.) 88; 47 [Sc. L. R. 774; 6 Adam, 294—Ct. of Justy.

11. *“Public Place”—“Enclosed Place”—“Place to which the Public have Restricted Right of Access”—Railway Mineral Depot—Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 1.*—The mineral depot of a railway company, to which only railway servants and persons having business with the railway company have access, is “a place to which the public have a restricted right of access,” within the meaning of sect. 1, sub-sect. 1, of the Street Betting Act, 1906. Such a depot, being enclosed by walls and fences, except for a distance of about 200 yards where it is bounded by but open to the main line of the company, which again is bounded by but open to the main line of another company, is an “enclosed place” within the meaning of the Act.

WALKER v. REID, [1911] S. C. (J.) 41; 48 Sc. [L. R. 99; 6 Adam, 358—Ct. of Justy.

12. *Using Premises for the Purpose of Betting with Persons Resorting thereto—Other Busi-*

III. Betting Houses and Betting—Continued.

ness—Assisting in Conducting the Business—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.]—M., the occupier of a shop, was prosecuted and convicted for unlawfully using the same for the purpose of betting with persons resorting thereto. The business of selling tobacco, chandlery, and papers was conducted in the shop. It was proved that betting persons frequented the shop, and that betting docketts and other documents relating to betting were found on the premises. P. was also prosecuted and convicted for "assisting in conducting the business" of the above shop used for betting. The only evidence against him was that he assisted M. in the business carried on in the shop.

HELD—that in the absence of evidence to the contrary it should be taken that P. helped in the whole business of the shop, and that there was evidence to support his conviction.

MAGUIRE *v.* QUINN, [1911] 2 I. R. 216; 45 I. [L. T. 77—Div. Ct., Ireland.

IV. LOTTERIES.

See also No. 3, supra.

13. Action to Recover Share in Lottery—Illegality.—The plaintiff alleged that she bought from the defendant one-eighth of a ticket in the Hamburg State Lottery; that the ticket had won a prize in the lottery; that the prize money had been paid to the defendant; but that the defendant refused to pay over to the plaintiff the share to which she was entitled.

HELD—that the action being in respect of a sum of money alleged to be due as the proceeds of a lottery was not maintainable.

GORENSTEIN *v.* FELDMANN, 27 T. L. R. 457—[Lord Coleridge, J.

14. Limited Company—Publishing Proposal and Scheme for Sale of Chances—"Person"—Punishment as Rogue and Vagabond—Lotteries Act, 1823 (4 Geo. 4, c. 60), ss. 41, 62, 67—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 4—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 2.]—A limited company which publishes a proposal scheme for the sale of chances in an unauthorised lottery cannot be convicted as rogues and vagabonds under the Lotteries Act, 1823.

HAWKE *v.* E. HULTON & Co., LD., [1909] 2 K. B. 93; 78 L. J. K. B. 633; 100 L. T. 905; 73 J. P. 295; 25 T. L. R. 474; 22 Cox, C. C. 122; 16 Manson, 164—Div. Ct.

GAS.

COL.

GAS COMPANIES AND SUPPLY OF GAS.

- (a) In General 244
- (b) Mains, Pipes, Lamps 244

See also COMPANIES, No. 45; HIGHWAYS, No. 13; RATES, No. 10.

GAS COMPANIES AND SUPPLY OF GAS.

(a) In General.

1. Statutory Offence—Charge of Improper Use of Gas Supplied by Meter—Gasworks Clauses Act, 1847 (10 Vict. c. 15), s. 18.]—The Gasworks Clauses Act, 1847, enacts—"And with respect to waste or misuse of the gas . . . (sect. 18) Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the undertakers, without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the undertakers is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the undertakers, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or who shall otherwise improperly use or burn such gas . . . shall forfeit to the undertakers the sum of £5 for every such offence. . . ."

A complaint charged a person with having improperly used and burned gas supplied to him by meter, contrary to the above-quoted section.

HELD—that the complaint was irrelevant, in respect that the only gas dealt with in the section of the statute was gas supplied otherwise than by meter.

FALKIRK CORPORATION *v.* RUSSELL, 48 Sc. [L. R. 838—Ct. of Justy.

(b) Mains, Pipes, Lamps.

2. Power to Break up Streets, &c., and Lay Down Pipes—Tunnel under Street—"Building"—Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 6, 7.]—The plaintiff constructed a tunnel under a road in order to connect his land lying on each side of the road.

HELD—that the tunnel was a "building" within sect. 7 of the Gasworks Clauses Act, 1847, and, therefore, that the gas company were not entitled to lay or place any pipes into, through, or against the tunnel without the plaintiff's consent.

Thompson v. Sunderland Gas Co. ((1879) 2 Ex. Div. 429) followed.

SCHWEDER *v.* WORTHING GASLIGHT AND COKE [Co., [1911] W. N. 215; 105 L. T. 670; 28 T. L. R. 34; 56 Sol. Jo. 53.—Eve, J.

GARNISHEE ORDERS.

See BANKRUPTCY, No. 4; COMPANIES, No. 10; CONTRACT, No. 5; COUNTY COURTS, No. 11.

GIBRALTAR.

See DEPENDENCIES AND COLONIES.

GIFTS.

	COL.
I. IN GENERAL	245
II. DONATIO MORTIS CAUSA.	
(a) Subject-matter	245
[No paragraphs in this vol. of the Digest.]	
(b) Validity	245
[No paragraphs in this vol. of the Digest.]	
(c) Generally	245
[No paragraphs in this vol. of the Digest.]	
<i>See also</i> WILLS, No. 39.	

I. IN GENERAL.

1. *Fiduciary Relation—Influence—Nature of Relation which will make Court set aside Gift—Dual Relation—Son managing Business for Mother—Gift induced by Natural Affection—Independent Advice.*—It is not every fiduciary relation between a donor and donee which will induce a Court of Equity to set aside a gift, but only those special relations which from their nature raise a presumption of undue influence. It is sufficient if an independent adviser sees that the donor understands what he is doing and intends to do it; he need not advise him to do it or not to do it.

Decision of Neville, J. ([1911] 1 Ch. 174; 80 L. J. Ch. 57; 103 L. T. 720) affirmed, but on wider grounds.

IN RE COOMBER, COOMBER *v.* COOMBER, [1911] 1 Ch. 723; 80 L. J. Ch. 399; 104 L. T. 517 (C. A.)

II. DONATIO MORTIS CAUSA.

See DEATH DUTIES, No. 2.

(a) Subject-matter.

[No paragraphs in this vol. of the Digest.]

(b) Validity.

[No paragraphs in this vol. of the Digest.]

(c) Generally.

[No paragraphs in this vol. of the Digest.]

GOODWILL.

See PARTNERSHIP, V.; SALE OF GOODS: TRADE.

GROUND GAME.

See GAME.

GROUND RENTS.

See LANDLORD AND TENANT; REAL PROPERTY AND CHATTELS REAL; SALE OF LAND.

GROWING CROPS.

See AGRICULTURE; BILLS OF SALE; LANDLORD AND TENANT; SALE OF LAND.

GUARANTEE.

	COL.
I. IN GENERAL	246
II. DISCHARGE OF SURETY	247

See also BANKRUPTCY, Nos. 23, 31; DEPENDENCIES, No. 15; ESTOPPEL, No. 2; INSURANCE, III., Nos. 3, 4, 5; PARTNERSHIP, No. 2.

I. IN GENERAL.

1. *Guarantee of Loan to Infant—Liability of Guarantor.*—The plaintiff sued the defendants, father and son, on a promissory note given in respect of a loan to the son, who was under age when the money was advanced to him. The father joined in the promissory note as a guarantor.

Held—that although by the Infants' Relief Act the transaction of loan to the son was void, the guarantee was valid, and therefore that the father was liable as guarantor.

Yorkshire Railway Wagon Co. v. Maclure ((1881) 9 Ch. D. 478) followed.

WAUTHIER *v.* WILSON, 27 T. L. R. 582—Pickford, J.

2. *Co-sureties—Contribution—Joint and Several Guarantor—Different Limits of Liability—Debt Payable by Instalments—Payment of Instalment by One Co-surety—Right to Contribution—Proportion of Whole Debt.*—The plaintiffs and defendants executed a deed in May, 1907, whereby they jointly and severally guaranteed repayment of £15,000, advanced on mortgage, interest thereon payable half-yearly, and premiums on a policy of insurance; and their respective liabilities were limited to maxima of various amounts. The £15,000 was not to be called in for ten years. The plaintiffs had paid various sums for interest and premiums, and the amounts thus paid were more than their due proportion of the total of the interest and premiums paid, but not of the entire debt, and did not reach their respective limits.

Held—that the £15,000, interest, and premiums constituted one debt; that, until the plaintiffs had paid more than their due proportion of the entire debt, they could not call on the defendants to contribute; and that it was immaterial that the plaintiffs had paid more than their share of the part which had become due.

Lawson v. Wright (1786), 1 Cox, 275) and *Ex parte Snowden* ((1881). 17 Ch. D. 41) explained.

STIRLING *v.* BURDETT, [1911] 2 Ch. 418 [105 L. T. 573—Warrington, J.]

II. DISCHARGE OF SURETY.

3. *Guarantee Given for Fidelity of Servant—Previous Dishonesty of Servant—Non-disclosure to Surety.*—In 1903 one L. entered the service of the plaintiffs as collector of certain moneys, but the usual bond as security for the fidelity of the servant in such cases was accidentally overlooked. Subsequently L. misappropriated money belonging to the plaintiffs, and he was then required to find a surety. He asked the defendant, a relative, to sign a bond for him, and the defendant in 1905, at the request of the plaintiffs, signed a bond to indemnify the plaintiffs against all misappropriations by L. of any moneys belonging to the plaintiffs. This bond contained a recital which tended to show that the bond was one taken on a man's first entering the service. At the time the defendant gave this bond he did not know and the plaintiffs did not disclose to him the fact that L. had been previously dishonest in the service. L. continued in the plaintiffs' employment for several years, when it was discovered that he had been guilty of serious misappropriations of moneys of the plaintiffs. In an action on the bond against the surety in respect of such misappropriations, it was found that there was no fraud on the part of the plaintiffs, and there was no intentional misleading or intentional concealing from the surety facts which the plaintiffs should have disclosed.

HELD—that there was a duty imposed upon the plaintiffs on taking the bond from the surety to disclose to him the material facts of L.'s previous dishonesty in their service, and that, as they had not disclosed this fact, the surety was discharged.

LONDON GENERAL OMNIBUS Co., LD. *v.* HOL-
[LOWAY, 105 L. T. 550.—Lord Alverstone, C.J.]

4. *Creditor's Suspicion that Debtor Guilty of Forgery—Obligation to Inform Surety.*—In security for advances to be made by a bank to A., M. in 1899 guaranteed payment of the premiums on certain policies of insurance assigned to the bank, and payment of interest on an account for advances to A. In December, 1906, circumstances came to the knowledge of the manager of the bank which afforded ground for the strongest suspicion, but short of legal proof, that A. had forged a bill for £3,000. That information was not communicated to M., and the bank continued to deal with A. (though without making any further advances to him) until November, 1907, when his estates were sequestered. A. was shortly afterwards convicted on his own confession of several acts of forgery, but it was never ascertained whether or not he had forged the bill for £3,000. The liability of M. under the guarantee was no greater in November, 1907, than it had been in December, 1906. M. having repudiated liability under the guarantee, on the ground that the bank should have communicated their suspicions to him in December, 1906:—

HELD—that in the circumstances, there was no duty on the bank to communicate their suspicions, and that M. was not freed from his liability.

BANK OF SCOTLAND *v.* MORRISON, [1911] S. C.
[593; 48 Sc. L. R. 527—Ct. of Sess.]

GUARDIAN AND WARD.

See INFANTS.

GUARDIANS OF POOR.

See POOR LAW.

GUN LICENCES.

See GAME; REVENUE.

HABEAS CORPUS.

See CROWN PRACTICE.

HABITUAL CRIMINAL.

See CRIMINAL LAW, I. (g).

HABITUAL DRUNKARD.

See INTOXICATING LIQUORS, VI.

HACKNEY CARRIAGES.

See METROPOLIS; STREET TRAFFIC.

HALL MARK.

See REVENUE, No. 6.

HARBOURS.

See SHIPPING AND NAVIGATION, XV.;
WATERS AND WATERCOURSES.

HAWKERS AND PEDLARS.

See MARKETS AND FAIRS.

HEARSAY EVIDENCE.

See EVIDENCE.

HEIRLOOMS.

See REAL PROPERTY AND CHATTELS
REAL ; SETTLEMENTS, No. 7 ;
TRUSTS ; WILLS.

HERIOT.

See COPYHOLDS.

HIGH TREASON.

See CRIMINAL LAW.

HIGHWAYS, STREETS, AND BRIDGES.

	COL.
I. ORIGIN OF HIGHWAYS.	
(a) Adoption	250
[No paragraphs in this vol. of the Digest.]	
(b) Dedication	250
(c) Prescription	252
[No paragraphs in this vol. of the Digest.]	
II. RIGHT OF PASSAGE	252
[No paragraphs in this vol. of the Digest.]	
III. ROADSIDE STRIPS AND DITCHES.	
(a) Adjoining Owners	252
(b) Presumption of Dedication	252
IV. OWNERSHIP OF SOIL	253
[No paragraphs in this vol. of the Digest.]	
V. DIVERSION	253
[No paragraphs in this vol. of the Digest.]	
VI. MANAGEMENT AND CONTROL OF HIGHWAYS	253
VII. REPAIR AND MAINTENANCE OF HIGHWAYS.	
(a) Awarded Road	253
[No paragraphs in this vol. of the Digest.]	
(b) Drainage	253
[No paragraphs in this vol. of the Digest.]	
(c) Indictment for Non-repair	253
(d) Mandamus	253
[No paragraphs in this vol. of the Digest.]	
(e) Material for Repair	253
[No paragraphs in this vol. of the Digest.]	
(f) Miscellaneous	253
[No paragraphs in this vol. of the Digest.]	
(g) Misfeasance	253
(h) Mode of Repair	254
[No paragraphs in this vol. of the Digest.]	
(i) <i>Ratione Tenure</i>	254
VIII. EXTRAORDINARY TRAFFIC.	
(a) Contributory Negligence of Authority	254
[No paragraphs in this vol. of the Digest.]	
(b) Liability for Damage	255
(c) Limitation of Action	255
[No paragraphs in this vol. of the Digest.]	
(d) Practice	255

IX. OBSTRUCTION OF HIGHWAYS	COL. 255
X. BRIDGES.	
(a) Erection and Repair	256
(b) Tolls	256
[No paragraphs in this vol. of the Digest.]	
XI. STATUTORY INTERFERENCE WITH HIGHWAYS.	
(a) Railway Companies	256
[No paragraphs in this vol. of the Digest.]	
(b) Tramways	256
[No paragraphs in this vol. of the Digest.]	
(c) Water and Canal Companies	256
(d) Other Undertakings	257
XII. PRIVATE STREET WORKS.	
(a) Charge on Premises	257
(b) Exemptions from Liability as Owner	258
(c) Local Act	258
[No paragraphs in this vol. of the Digest.]	
(d) Miscellaneous	258
(e) New Streets	259
(f) Notices	260
(g) Objections	260
[No paragraphs in this vol. of the Digest.]	
(h) Owners	260
[No paragraphs in this vol. of the Digest.]	
(i) Property in Street	260
[No paragraphs in this vol. of the Digest.]	
(k) "Street"	260
XIII. MISCELLANEOUS	260
[No paragraphs in this vol. of the Digest.]	

See also ANIMALS, Nos. 2, 3, 4 ; DEPENDENCIES, No. 1 ; ELECTRIC LIGHTING, No. 3 ; LAND TAX, No. 2 ; LOCAL GOVERNMENT, No. 7 ; METROPOLIS, IX. ; NEGLIGENCE, Nos. 3, 10, 12, 16 ; NUISANCE, No. 2 ; STREET TRAFFIC.

I. ORIGIN OF HIGHWAYS.**(a) Adoption.**

[No paragraphs in this vol. of the Digest.]

(b) Dedication.

See also MAGISTRATES, No. 4 ; METROPOLIS, No. 3.

1. *Cul-de-sac in City of London—Disuse of Court Forming Part of Cul-de-sac—No Closing Order—Dedication—Evidence.*—In 1878 there existed in the City of London a court behind No. 38, Barbican, and a passage thereto from Barbican. To the court the public had free access through the passage. It was proved that the boys of the neighbourhood went there to play ; that on one occasion an organ-grinder was found there ; and that it was sometimes chosen as a suitable place for fights because it was quiet. It was policed by the City police and scavenged and lit by the Commissioners of Sewers. In 1877 land which included this court was acquired by the Commissioners of Sewers under an Improvement Act. Acting under their powers the Commissioners

I. Origin of Highways—Continued.

erected a hoarding which prevented the public reaching the site of the court through the passage. The passage was then used for private purposes. In 1890, the scheme having been abandoned, the Commissioners commenced to sell the land in building lots, and in 1896 they sold a lot including the court to the defendants, together with such right of way over and along the passage as they had power to grant. In 1910 the plaintiff, who occupied 38, Barbican, sought to prevent the defendants using the passage on the ground that it was not a public highway, and that there was no right of way.

HELD, upon the facts—that the court and passage, although a *cul-de-sac*, were in and before 1878 dedicated to the public and a public highway, and that as the various acts of the Commissioners did not include a closing order, the passage never lost its public character, and that the defendants were entitled to judgment.

JOSSELSOHN v. WEILER, 75 J. P. 513; 9 L. G. R. [1132—Scrutton, J.

2. *Presumption—User by Public—Knowledge of Owner Capable of Dedicating—Inference.*—Dedication of a highway may be established by proof of definite acts of dedication on the part of the owner, or it may be inferred from use and enjoyment on the part of the public; but such use and enjoyment must be use and enjoyment as of right known to the owner and acquiesced in by him. Further, this knowledge and recognition on the part of the owner may itself be inferred from the fact that the use and enjoyment has been so open and notorious as of right as to give rise to the presumption that the owner must have been aware of it and has acquiesced in it; or during living memory the use and enjoyment has been such that had there been an absolute owner capable of dedicating the way, dedication would have been inferred. If at the same time the circumstances are consistent with such use and enjoyment having been still more ancient, dedication may be inferred by some owner before living memory; but if it is shown that before a definite date the rights could not have existed, and since that date there has been no owner who could dedicate, then it would be impossible to infer any dedication.

WEBB v. BALDWIN, 75 J. P. 564—Parker, J.

3. *Track on Common—Public Footpath—Wheeled Traffic—Ancient Highway.*—The plaintiff alleged that the public trespassed on a track across a common, which was admittedly a public footpath, by using it for wheeled traffic. The defendants called witnesses to show that for 50 years past it had been used by the people of the neighbourhood with carts and wagons or vans. The plaintiff contended that from 1832 to 1883 the site of the common had been in settlement, that there was no evidence of user before 1832, and that therefore there could have been no dedication of the track as a highway.

HELD, on the evidence—that as far back as living memory extended the track had been used as a cartway for wheeled traffic; that the track

was an ancient highway, not necessarily from time immemorial, and that it was unnecessary to prove the exact time or mode of dedication.

Eyre v. New Forest Highway Board ((1892) 56 J. P. 517) applied.

PARIS v. LYMINGTON RURAL DISTRICT [COUNCIL, 75 J. P. N. C. 88—Joyce, J.

(c) Prescription.

[No paragraphs in this vol. of the Digest.]

II. RIGHT OF PASSAGE.

[No paragraphs in this vol. of the Digest.]

III. ROADSIDE STRIPS AND DITCHES.

(a) Adjoining Owners.

4. *Dangerous Pit Close to but not Immediately Adjoining Highway—Power of Local Authority to Require Pit to be Fenced.*—“In any Situation Adjoining or Abutting on Highway”—Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 30.]—The defendant was the owner of a narrow strip of land adjoining a highway on one side and a deep chalk pit on the other. The defendant was not the owner of the pit, but the edge of his land by exposure and erosion had worn away, and now formed part of the top of the pit. From the lie of the land the existence of the pit was a danger to persons lawfully using the highway.

HELD—that the local authority were entitled under sect. 30 of the Public Health Acts Amendment Act, 1907, to require the defendant to fence the pit in order to prevent danger therefrom.

CARSHALTON URBAN DISTRICT COUNCIL v. [BURRAGE, [1911] 2 Ch. 133; 80 L. J. Ch. 500; 104 L. T. 306; 75 J. P. 250; 27 T. L. R. 280; 9 L. G. R. 1037—Neville, J.

(b) Presumption of Dedication.

5. *Turnpike—Waste—Enclosure—Presumption—Evidence—Tithe Map—Injunction—Turnpike Roads Act, 1822* (3 Geo. 4, c. 126), ss. 118, 124.]—Where the lord of a manor encloses a strip of land by the side of a public highway and within a few feet only from the metalled portion of the road, then, whatever the presumption might have been before, a presumption thereafter arises that what he has left between the metal and his fence is dedicated to the public.

Any presumption as to the extent of a public right of way ought to be drawn with reference to all the circumstances existing at the time when the question as to the extent of the public right arises. It is not right to raise a presumption from a state of circumstances proved to have existed thirty or fifty years ago, ignoring all that has happened since.

A tithe map is not admissible as evidence of the extent of a public right of way, though it may be evidence that part of the land was not used at the time when the map was made for such purposes as to make it titable.

The expression in sect. 118 of the Turnpike

III. Roadside Strips and Ditches—*Continued.*

Roads Act, 1822, "common or waste land on the side or sides of any turnpike road," means land not separated from the road by any existing fence; and "common or waste land" does not include land which has been enclosed from the road in part since the middle of the last century and in part from 1892, when a previous fence was erected.

COPESTAKE *v.* WEST SUSSEX COUNTY COUNCIL, [1911] 2 Ch. 331; 80 L. J. Ch. 673; 105 L. T. 298; 75 J. P. 465; 9 L. G. R. 905. Parker, J.

IV. OWNERSHIP OF SOIL.

[No paragraphs in this vol. of the Digest.]

V. DIVERSION.

[No paragraphs in this vol. of the Digest.]

VI. MANAGEMENT AND CONTROL OF HIGHWAYS.

See No. 13, *infra*.

VII. REPAIR AND MAINTENANCE OF HIGHWAYS.

See also No. 12, *infra*; METROPOLIS, No. 16.

(a) Awarded Road.

No paragraphs in this vol. of the Digest.]

(b) Drainage.

[No paragraphs in this vol. of the Digest.]

(c) Indictment for Non-repair.

See CRIMINAL LAW, No. 3.

(d) Mandamus

[No paragraphs in this vol. of the Digest.]

(e) Material for Repair.

[No paragraphs in this vol. of the Digest.]

(f) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

(g) Misfeasance.

See also NEGLIGENCE, Nos. 7, 8.

6. *Footpath—Highway Authority—Failure to Fill up Hole in Highway—Misfeasance or Non-feasance—No Obligation on Owner of Adjoining Land to Support Highway—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4 (1).*—The plaintiff brought an action against the defendants to recover damages for personal injuries sustained by her through slipping in a hole in a public highway which was vested in the defendants. The highway in question, a footpath, adjoined a ballast yard, and in 1910, at the time of the accident, was composed of hoggin. At a point at which the footpath reached the entrance to the ballast yard it sloped to a depth of 9 in. and then fell another 3 in. until it reached the level of the yard. The footpath had been taken over by the defendants in 1900, and in 1904 they had repaired it in such a way that any depression then existing would have been filled up.

In 1907 the defendants purchased the ballast yard, and at that time there was in existence upon the footpath a hole similar in character to that which existed at the time of the accident. From the evidence given it appeared that the depression was due to the hoggin slipping down the slope into the yard, and that this process was assisted by the passing of persons down into the yard.

HELD, upon the above facts—that there was no evidence which rendered the defendants liable either as the highway authority or as the owners of the ballast yard; that in the former capacity they were not liable because they had been guilty of no misfeasance, and in the latter because they were under no obligation as owners of the yard to provide an artificial support to the footpath which would prevent it from slipping away.

SHORT *v.* HAMMERSMITH CORPORATION, 104 [L. T. 70; 75 J. P. 82; 9 L. G. R. 204—Div. Ct.]

(h) Mode of Repair.

[No paragraphs in this vol. of the Digest.]

(i) Ratione Tenuræ.

7. *Liability to Repair ratione tenuræ—Agreement with Local Authority to take over Liability in Perpetuity—Validity Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 148—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25—"Incumbrance"—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21 (ii.).*—By sect. 148 of the Public Health Act, 1875, urban authorities were empowered by agreement with any person liable to repair a street or road to take on themselves the maintenance, repair, cleansing or watering of any such street or road on such terms as they and such person might agree on. By sect. 25 of the Local Government Act, 1894, that power was transferred to rural district councils.

HELD—that under sect. 148 a rural district council were entitled to agree with a person liable to repair a highway *ratione tenuræ* to take on themselves in perpetuity in consideration of a money payment the liability for the maintenance and repair of the highway, and that the effect of such agreement would be to effectually free and for ever discharge the land and the owner and occupier thereof from that liability.

Dictum of Cockburn, C.J., in *Nutter v. Acerington Local Board of Health* ((1878) 4 Q. B. D. 379) explained and distinguished.

Quære, whether a liability to repair a highway *ratione tenuræ* on settled land is an incumbrance within the meaning of sect. 21, sub-sect. (ii.), of the Settled Land Act, 1882.

IN RE EARL OF STAMFORD AND WARRINGTON, [PAYNE *v.* GREY (No. 2). [1911] 1 Ch. 648; 80 L. J. Ch. 361; 105 L. T. 12; 75 J. P. 346; 27 T. L. R. 256; 55 Sol. Jo. 483; 9 L. G. R. 719—Warrington, J.]

VIII. EXTRAORDINARY TRAFFIC.

(a) Contributory Negligence of Authority.

[No paragraphs in this vol. of the Digest.]

VIII. Extraordinary Traffic *Continued.*

(b) Liability for Damage.

8. *Excessive Weight—Average Expense of Repair—“Highways in the Neighbourhood”—Extraordinary Expenses—Damage Recoverable—Highways and Locomotives (Amendment) Act, 1878* (41 & 42 Vict. c. 77), s. 23—*Locomotives Act, 1898* (61 & 62 Vict. c. 29), s. 12.]—The amount which can be recovered under sect. 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by sect. 12 of the Locomotives Act, 1898, is the expense caused by the damage arising from the extraordinary traffic or excessive weight upon the highway, provided the damage has been such as to cause extraordinary expense, and in order that the expense may be extraordinary within the meaning of the section the highway rate of the district must be substantially increased by the damage so as to place an unfair burden on the ratepayers.

The expression “highways in the neighbourhood” in the section means similar roads in a neighbourhood of a similar character to that in which the road upon which the extraordinary traffic is conducted is situated.

Decision of Channell, J. ([1911] 1 K. B. 734; 104 L. T. 542; 75 J. P. 194) affirmed.

BILLERICAY RURAL COUNCIL v. POPLAR [UNION AND KEELING, [1911] 2 K. B. 801; 80 L. J. K. B. 1241; 105 L. T. 476; 75 J. P. 497; 55 Sol. Jo. 647; 9 L. G. R. 796—C. A.]

(c) Limitation of Action.

[No paragraphs in this vol. of the Digest.]

(d) Practice.

9. *Particulars—Average Expenditure of Repairing Comparable Highways in the Neighbourhood—Highways and Locomotives (Amendment) Act, 1878* (41 & 42 Vict. c. 77), s. 23.]—Where a highway authority claim damages for extraordinary traffic over a highway within their district, and in their statement of claim allege that the claim was estimated by deducting from the sum they had expended in repair the average sum expended during a similar period in repairing roads in the neighbourhood of a similar character to that in which the road upon which the extraordinary traffic is conducted is situated, the contractor who was made a defendant is entitled to have particulars of the names of the highways in the neighbourhood and the items of expenditure thereon.

Billericay Rural Council v. Poplar Union and Keeling (*supra*) followed.

COLCHESTER BOROUGH COUNCIL v. GEPP, KING [THIRD PARTY, 56 Sol. Jo. 160—C. A.]

IX. OBSTRUCTION OF HIGHWAYS.

See also MAGISTRATES, No. 12; NEGLIGENCE, No. 12; NUISANCE, No. 3.

10. *Meeting Held on Highway—“Lawful Public Meeting”—Public Meeting Act, 1908* (8 Edw. 7, c. 66), s. 1.]—The mere fact that a public meeting is held on a highway does not make it unlawful. Such a meeting may therefore

be a “lawful public meeting” within the purview of the Public Meeting Act, 1908.

BURDEN v. RIGLER, [1911] 1 K. B. 337; 80 [L. J. K. B. 100; 103 L. T. 758; 75 J. P. 36; 27 T. L. R. 140; 9 L. G. R. 71—Div. Ct.]

X. BRIDGES.

(a) Erection and Repair.

11. *Trust for Repair of Bridge—Bridge Vested in Public Body—Extent of Obligation to Repair.*]—Where a fund is devoted by a settlor to the repair of a public bridge it remains applicable for that purpose, notwithstanding that the Legislature has cast the burden of such repairs upon a public body.

Attorney-General v. Day ([1900] 1 Ch. 31) applied.

A bridge, for the repair of which a settlor devoted certain funds, crossed the Severn. As the result of two private Acts and by agreement between the justices and the Severn Commissioners, a part of the bridge was made to open so as to allow traffic on the river to pass to and fro. By virtue of the joint operation of these statutes and the agreement, the Commissioners were bound to keep in repair the opening portion of the bridge.

HELD—that notwithstanding the obligation cast upon the Severn Commissioners, the funds left by the settlor were applicable to the repair of the opening portion of the bridge.

IN RE HALL'S CHARITY, 28 T. L. R. 32—[Warrington, J.]

(b) Tolls.

[No paragraphs in this vol. of the Digest.]

XI. STATUTORY INTERFERENCE WITH HIGHWAYS.

See also ELECTRIC LIGHTING, No. 3; GAS, No. 2.

(a) Railway Companies.

[No paragraphs in this vol. of the Digest.]

(b) Tramways.

[No paragraphs in this vol. of the Digest.]

(c) Water and Canal Companies.

12. *Roadway over Canal—Liability to Repair—Repairs Voluntarily Done by Local Authority—Right to Indemnity from Person under Statutory Liability to Repair—Macclesfield Canal Act, 1826* (7 Geo. 4, c. xxx.), ss. 19, 156.]—A canal company, the predecessors in title of the defendants, acting under powers conferred upon them by a private Act of Parliament, made a canal, and in so doing cut through an old highway, which they carried by a new bridge over the canal. The roadway of the bridge having fallen out of repair and become dangerous, the plaintiffs, who were the highway authority for the district, called upon the defendants to do the necessary repairs to the roadway, and, upon their refusal to do so, did the work themselves and brought

XI. Statutory Interference with Highways— *Continued.*

this action to recover the cost thereof from the defendants.

HELD—(1) that upon the true construction of the sections of the private Act the defendants, and not the plaintiffs, were liable to repair the roadway over the bridge as well as the fabric of the bridge itself; but (2) that the plaintiffs, being under no legal liability to repair the roadway, had acted as mere volunteers in doing the repairs, and could not recover from the defendants the cost so incurred by them.

Decision of Div. Ct. affirmed on the second ground.

MACCLESFIELD CORPORATION v. GREAT CENTRAL [Ry. Co., [1911] 2 K. B. 528; 80 L. J. K. B. 884; 104 L. T. 728; 75 J. P. 369; 9 L. G. R. 682—C. A.]

(d) Other Undertakings.

13. Gas Company—Breaking up Street—Persons Entitled to Notice—Highway not Repairable by Inhabitants at Large—Persons having “Control or Management” —Rural District Council—Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 8.]—By sect. 8 of the Gasworks Clauses Act, 1847, it is enacted that before the undertakers proceed to open or break up any street they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, as therein directed.

A gas company, having occasion to lay a gas main under a highway dedicated to the public but not repairable by the inhabitants at large, opened and broke up the highway without giving notice to the rural district council in whose district the same was situate.

HELD (Bankes, J., dissenting)—that the rural district council was not a person under whose control or management the highway was within the meaning of the above enactment.

REDHILL GAS CO. v. REIGATE RURAL DISTRICT COUNCIL, [1911] 2 K. B. 565; 80 L. J. K. B. 1062; 105 L. T. 24; 75 J. P. 358; 9 L. G. R. 814—Div. Ct.]

XII. PRIVATE STREET WORKS.

(a) Charge on Premises.

14. Apportionment of Expenses—Premises which may be Included—Access Obtained “Through a Court, Passage, or Otherwise”—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 10.]—By sect. 10 of the Private Street Works Act, 1892 (which is an adoptive Act), an urban authority may include in an apportionment of expenses of private street works premises which do not front, adjoin or abut on the street, but access to which is obtained from the street “through a court, passage, or otherwise.”

Y.D.

HELD—that the words “court, passage, or otherwise” include anything which gives access to the premises in the same manner as a court or passage, but do not include either a public street, or a road made for a purpose other than that of giving access to the premises in question.

NEWQUAY URBAN DISTRICT COUNCIL v. [RICKEARD, [1911] 2 K. B. 846; 80 L. J. K. B. 1164; 105 L. T. 519; 75 J. P. 382; 9 L. G. R. 1042—Div. Ct.]

(b) Exemptions from Liability as Owner.

15. Disused Chapel—Occasional Services and Entertainments Held Therein—Place “exclusively appropriated to public religious worship”—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 16—Poor Rate Exemptions Act, 1833 (3 & 4 Will 4, c. 30), s. 1.]—By sect. 16 of the Private Street Works Act, 1892, a church, chapel, or place appropriated to public religious worship, which is by law exempt from poor rates, is exempt from the expenses of private street works, and by sect. 1 of the Poor Rate Exemption Act, 1833, a place which is “exclusively appropriated to public religious worship” is exempt from poor rates.

A building, described as a “disused Wesleyan chapel,” had up to five years ago, when a new church was built, been used as a church. The premises were now used on Sundays for a Sunday-school, and on week nights for religious services. A debating society met therein, and there had also been held therein a political meeting, an “at home” in connection with the church work, and entertainments open to the public were given, for which a charge for admission was made. The moneys arising therefrom were applied by the owners to meet the expenses of the church. The premises had not in fact been rated for the relief of the poor. Expenses having been incurred by the local authority in executing private street works:—

HELD—that the premises were not a place “exclusively appropriated to public religious worship” and were not by law exempt from rates for the relief of the poor, and therefore did not come within the exemption in sect. 16 of the Private Street Works Act, 1892, and the owners were liable to the expenses of the private street works.

WALTON-LE-DALE URBAN DISTRICT COUNCIL [v. GREENWOOD, 105 L. T. 547; 75 J. P. 541; 9 L. G. R. 1148—Div. Ct.]

(c) Local Act.

[No paragraphs in this vol. of the Digest.]

(d) Miscellaneous.

16. Apportionment—Practice—Costs—County Court—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 13.]—Resolutions were duly passed by an urban district council to adopt the Private Street Works Act, 1892, and that a certain street should be sewered, levelled, paved, metalled, flagged, channelled and made good. £137 7s. 9d. was charged on the de-

XII. Private Street Works—Continued.

defendant's premises, which consisted of nine houses. A summons was taken out for payment of this sum with 5 per cent. interest. The defendant paid £137 7s. 9d. with 4 per cent. interest, and objected that (1) the action had been commenced before three months had expired from the date of the notice; (2) 4 per cent. only should have been asked; (3) the £137 7s. 9d. was asked as a whole sum and not apportioned on the houses individually; and (4) the proceedings ought to have been brought in the county court. An application by the defendant for leave to interrogate was adjourned into Court to come on with the summons, and the summons was amended by stating in a schedule how the £137 7s. 9d. was apportioned upon the defendant's premises.

HELD—that defendant must pay the costs of the action, including the costs of the application for leave to interrogate.

PONTYPRIDD URBAN DISTRICT COUNCIL *v.* JONES, 75 J. P. 345—Eady, J.

(e) New Streets.

17. *Laying Out New Street—Plan—Approval of Local Authority—Restrictive Covenant—Impossibility of Complying with Bye-law—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 158.*—The owner of a building estate deposited with the local authority plans of works intended to be executed by him, including, *inter alia*, a new street of the minimum width permitted by a local bye-law. Part of the site of the new street lay on a field which was subject to a restrictive covenant preventing the field from being used for the purpose of a street. The local authority refused to approve the plans on the ground that the existence of the covenant made it impossible for a new street of the width shown on the plans to be constructed.

HELD—that the local authority were entitled to refuse to approve the plans on that ground.

R. *v.* TYNEMOUTH CORPORATION, EX PARTE [COWPER, [1911] 2 K. B. 361; 80 L. J. K. B. 892; 105 L. T. 217; 75 J. P. 420; 9 L. G. R. 953—Div. Ct.]

18. *Building Houses on Land Adjoining Highway—"Laying out" New Street of Less Width than Required by Bye-laws—Action for Injunction.*—On his land, which abutted on a road and was surrounded by a hedge, the defendant built a row of houses. He put gates in the hedge as each house was completed, and cement paths leading from the gates to the doors of the houses. The strip of land between the houses and the road was not made part of the road, nor did the defendant propose to make it so.

HELD—that the defendant had not, by what he had done, "laid out" a new street within the meaning of the local authority's bye-laws.

Devonport Corporation v. Tozer ([1903] 2 Ch. 759) followed.

ATTORNEY-GENERAL *v.* DORIN, [1911] W. N. [253; 28 T. L. R. 105; 56 Sol. Jo. 123.]

(f) Notices.

19. *Apportionment of Expenses—Frontager Owning Two Properties Adjoining—Notice in Respect of One Property—Apportionment Calculated on Frontage of Both—Arbitration—Jurisdiction of Arbitrator—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.*—The owner of two properties which adjoined each other and abutted on a street received a notice to execute certain private street improvement works under sect. 150 of the Public Health Act, 1875. The notice referred only to one of the two properties. The owner did not comply with the notice, and the local authority executed the works in the street adjoining both properties. The apportionment of the expenses incurred served upon the owner also only referred to the one property, though the owner's share of the expenses was calculated on the frontage of both. The owner disputed the apportionment and the matter was referred to arbitration. The arbitrator adjudged that the apportionment was bad, and that the owner's share should be reduced to a sum proportionate to the frontage of the one property to which the notice and the apportionment had referred.

HELD—that the arbitrator had jurisdiction to make this award.

THOMAS *v.* HENDON RURAL DISTRICT COUNCIL, [75 J. P. 161; 9 L. G. R. 234—Div. Ct.]

(g) Objections.

[No paragraphs in this vol. of the Digest.]

(h) Owners.

[No paragraphs in this vol. of the Digest.]

(i) Property in Street.

[No paragraphs in this vol. of the Digest.]

(k) "Street."

See No. 18, *supra*.

XIII. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

HIRE OF GOODS.

See BAILMENT.

HIRE-PURCHASE.

See BAILMENT; BANKRUPTCY; BILLS OF SALE.

HOLIDAYS.

See TIME.

HOMICIDE.

See CRIMINAL LAW AND PROCEDURE.

HONG KONG.

See DEPENDENCIES AND COLONIES.

HORSE RACING.

See GAMING AND WAGERING.

HORSE SLAUGHTERERS.

See ANIMALS.

HOSPITALS.

See CHARITIES ; NEGLIGENCE, No. 21 ;
PUBLIC HEALTH.

HOTELS.

See INNS AND INNKEEPERS ; INTOXI-
CATING LIQUORS ; REVENUE.

HOUSE AGENT.

See AGENCY ; REVENUE ; SALE OF LAND ;
VALUERS AND APPRAISERS.

HOUSEBREAKING.

See CRIMINAL LAW.

HOUSE OF LORDS.

See COURTS ; PARLIAMENT.

HOUSING OF THE WORK- ING CLASSES.

See COMPULSORY PURCHASE ; METRO-
POLIS ; PUBLIC HEALTH.

HUSBAND AND WIFE.

I. PROMISE TO MARRY COL.
263

[No paragraphs in this vol. of the Digest.]

II. MARRIAGE.

(1) Presumption 263

[No paragraphs in this vol. of the Digest.]

(2) Proof 263

(3) Validity 263

[No paragraphs in this vol. of the Digest.]

(4) Miscellaneous 263

[No paragraphs in this vol. of the Digest.]

III. PERSONAL RIGHTS AND OBLIGA- TIONS ARISING FROM MARRIAGE 261

IV. EFFECT OF MARRIAGE WITH REGARD TO PROPERTY.

(1) Conveyance by Wife 261

(2) Dower, etc. 261

[No paragraphs in this vol. of the Digest.]

(3) Separate Estate 261

(4) Miscellaneous 261

V. ANTE-NUPTIAL OBLIGATIONS OF WIFE 265

[No paragraphs in this vol. of the Digest.]

VI. CONTRACTS OF WIFE.

(1) As Agent for Husband 265

(2) With Husband 266

(3) Transactions generally 266

[No paragraphs in this vol. of the Digest.]

VII. TORTS OF WIFE DURING COVER- TURE 266

VIII. GIFTS BETWEEN HUSBAND AND WIFE 267

IX. PROCEEDINGS.

(1) Against Husband and Wife 267

[No paragraphs in this vol. of the Digest.]

(2) Between Husband and Wife 267

[No paragraphs in this vol. of the Digest.]

(3) Wife's Liability for Costs 267

X. SEPARATION DEEDS 268

XI. MATRIMONIAL CAUSES IN THE HIGH COURT.

(1) Alimony and Maintenance 269

(2) Costs 269

(3) Cruelty 271

(4) Custody of Children 271

[No paragraphs in this vol. of the Digest.]

(5) Damages 271

[No paragraphs in this vol. of the Digest.]

(6) Desertion 271

(7) Discretion of Court 272

(8) Foreign Divorce 272

[No paragraphs in this vol. of the Digest.]

(9) Judicial Separation 272

(10) Jurisdiction 272

[No paragraphs in this vol. of the Digest.]

(11) Nullity of Marriage 272

Husband and Wife *Continued.*

XI. MATRIMONIAL CAUSES IN THE HIGH COURT *Continued.*

(12) Practice 273

(a) *Appeals and New Trials* 273

[No paragraphs in this vol. of the Digest.]

(b) *Arrangement of Lists* 273

[No paragraphs in this vol. of the Digest.]

(c) *Contents of Petition* 273

[No paragraphs in this vol. of the Digest.]

(d) *Delay* 273

(e) *Divorce Bill* 273

(f) *Evidence* 273

(g) *Hearing* 273

(h) *Interlocutory Proceedings* 273

(i) *Intervention of Third Party* 274

(j) *Notice, Service and Stay of Proceedings* 274

(k) *Miscellaneous* 274

(13) Divorce 274

XII. PROTECTION ORDER 274

[No paragraphs in this vol. of the Digest.]

XIII. RESTITUTION OF CONJUGAL RIGHTS 274

[No paragraphs in this vol. of the Digest.]

XIV. VARIATION OF SETTLEMENTS 274

XV. SUMMARY PROCEEDINGS IN MATRIMONIAL CAUSES.

(a) Cruelty and Drunkenness 275

[No paragraphs in this vol. of the Digest.]

(b) Desertion 275

(c) Evidence 275

[No paragraphs in this vol. of the Digest.]

(d) Jurisdiction 275

(e) Maintenance 276

[No paragraphs in this vol. of the Digest.]

(f) Practice 276

See also CONFLICT OF LAWS, No. 3; CRIMINAL LAW, No. 2; INSURANCE, No. 11; POOR LAW, No. 6; SETTLEMENTS, No. 9; WILLS, No. 39.

I. PROMISE TO MARRY.

[No paragraphs in this vol. of the Digest.]

II. MARRIAGE.

(1) Presumption.

[No paragraphs in this vol. of the Digest.]

(2) Proof.

See also CRIMINAL LAW, No. 55.

1. *Marriage in Register Office in Ireland—Certificate.*—A marriage which has been duly celebrated in a register office in Ireland may be proved by the certificate of such marriage.

GUILLET v. GUILLET, 27 T. L. R. 416—Deane, [J.]

(3) Validity.

[No paragraphs in this vol. of the Digest.]

(4) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

III. PERSONAL RIGHTS AND OBLIGATIONS ARISING FROM MARRIAGE.

See MASTER AND SERVANT, No. 33.

IV. EFFECT OF MARRIAGE WITH REGARD TO PROPERTY.

(1) Conveyance by Wife.

2. *Mortgage by Husband and Wife of Wife's Property—Payment of Mortgage Money to Husband and Wife—Presumption—Exoneratation of Wife's Property.*—Where a wife concurs with her husband in mortgaging her property and it appears on the face of the mortgage deed that the money was paid to the husband, or, before 1883, to the husband and wife, the Court infers, subject to rebutting evidence, that the debt is the debt of the husband, and that the wife's property is a surety for it. By way of rebuttal it may be shown either that the money was in fact paid to the wife in such a way as to become her separate property or that it was applied by the husband for her benefit.

Dictum of Wood, V.-C., in *Hudson v. Carmichael* ((1854) Kay, 613, 620) to the above effect followed.

The above *dictum* has not been affected by the *dicta* of Lindley, M.R., in *Paget v. Paget* ([1898] 1 Ch. 474, 475).

HALL v. HALL, [1911] 1 Ch. 487; 80 L. J. Ch. [340; 104 L. T. 529—Warrington, J.]

(2) Dower, etc.

[No paragraphs in this vol. of the Digest.]

(3) Separate Estate.

See No. 10, *infra*.

(4) Miscellaneous.

3. *Gift of Income During Widowhood—Subsequent Marriage with Deceased Sister's Husband—Effect of Marriage being Validated by Statute—Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), ss. 1, 2.*—A man died in 1902 having by his will given his property upon trust to pay his wife the income thereof while she remained his widow, with a gift over on her death or second marriage. In 1904 she went through the ceremony of marriage with her deceased sister's husband, but this marriage was validated by sect. 1 of the Deceased Wife's Sister's Marriage Act, 1907, which was passed and came into operation on August 28th, 1907.

HELD—that the effect of sect. 2 of the Act was that the plaintiff was still entitled to receive the income of the testator's property.

Seemle, that although the Act renders valid as civil contracts previous marriages with deceased wives' sisters, it does not alter or interfere with any rights of property depending on those marriages not being valid.

IN RE WHITFIELD, HILL v. MATHIE, [1911] 1 [Ch. 310; 80 L. J. Ch. 263; 103 L. T. 878; 27 T. L. R. 203; 55 Sol. Jo. 237—Parker, J.]

IV. Effect of Marriage with Regard to Property —Continued.

4. Marriage with Deceased Wife's Sister—Husband Dead Before Passing of Act—Next of Kin of Son of First Marriage—Children of Second Marriage—Spes Successionis—Interest in Expectancy—Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), ss. 1, 2.]—Sect. 1 of the Deceased Wife's Sister's Marriage Act, 1907, applies to and makes valid a marriage with a deceased wife's sister although, owing to the death of one of the parties, the assumed relationship of husband and wife had ceased to exist before the date of the passing of the Act.

The *spes successionis* which the brother of a person has during his lifetime to a share of his property, as one of his next of kin, in the event of his dying intestate, is not an "interest in expectancy" protected by sect. 2 of the Act.

G., who had married his deceased wife's sister, died before the passing of the Deceased Wife's Sister's Marriage Act, 1907, leaving children by his first marriage and one child by his second. T. G., a child of the first marriage, died intestate in 1911.

HELD—that the child of the second marriage was entitled to rank with the children of the first as next of kin to the deceased.

IN RE GREEN, GREEN v. MEINALL, [1911] 2 Ch. [275; 80 L. J. Ch. 623; 105 L. T. 360; 27 T. L. R. 490; 55 Sol. Jo. 552—Warrington, J.]

V. ANTE-NUPTIAL OBLIGATIONS OF WIFE.

[No paragraphs in this vol. of the Digest.]

VI. CONTRACTS OF WIFE.

(1) As Agent for Husband.

5. Wife's Desertion—Liability of Husband for Wife's Debts—Ostensible Authority—Limited Authority.]—The defendant's wife, while living with him, on various occasions ordered goods from the plaintiffs, for which the defendant paid and which were delivered at the defendant's address. The defendant's wife left him, and as soon as he discovered that she was living with another man he advertised in the *Times* that he would not be responsible for her debts. In the meanwhile, before the appearance of the advertisement, the defendant's wife had ordered goods from the plaintiffs which she directed to be booked to the defendant at the same address as before, but to be sent to another address where she then was. In an action for the price of these goods:—

HELD—that the defendant was not liable; (*per* DARLING, J.) because the ostensible authority given to his wife to order goods from the plaintiffs ceased when she left him to live with another man, and his quiescence, being due to ignorance of her whereabouts, did not amount to acquiescence in a continuance of such authority; (*per* BUCKNILL, J.) because

the authority given was limited to goods sent to the defendant's address.

SWAN AND EDGAR, LD. v. MATHIESON, 103 L. T. [832; 27 T. L. R. 153—Div. Ct.]

6. Solicitors' Costs of Matrimonial Suit—Necessaries—Principal and Agent—Judgment against Wife a Bar to Proceeding against Husband.]—A matrimonial suit brought by a wife, having separate property, against a husband was settled by agreement between husband and wife behind the backs of the solicitors. The petitioner's solicitors sued the wife for the costs incurred by them in the suit and recovered judgment against her, to which judgment was made a return of *nulla bona*, and thereupon they sought to recover the costs as against the husband in an application to the Divorce Court.

HELD—that, as the wife contracted as the agent of her husband, a judgment recovered against her was a bar to any proceedings against her husband as principal.

SULLIVAN v. SULLIVAN, 45 I. L. T. 198—C. A., [Ireland.]

(2) With Husband.

7. Security for Husband's Debt—Independent Advice—Undue Influence—Canada.]—In transactions between a husband and wife the burden of proving undue influence lies upon those who allege it.

Nedby v. Nedby (1852) 5 De G. & Sm. 377 approved.

In transactions between a husband and wife the husband's solicitor owes a duty to the wife, where her interests are concerned, to advise her and place her position and the consequences of what she is doing fully and plainly before her. If she rejects his intervention he ought to insist upon the wife being separately advised.

BANK OF MONTREAL v. STUART, [1911] A. C. [120; 80 L. J. P. C. 75; 103 L. T. 641; 27 T. L. R. 117—P. C.]

(3) Transactions generally.

[No paragraphs in this vol. of the Digest.]

VII. TORTS OF WIFE DURING COVERTURE.

8. Wife's Tort—Husband's Liability—Decree of Judicial Separation—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 26.]—The plaintiff sued the defendants, who were husband and wife, to recover £3,590 which he alleged he had been induced to pay by reason of certain false and fraudulent statements of the female defendant. The defendants were living together at the time the money was so paid by the plaintiff, but subsequently the male defendant obtained a judicial separation from his wife. At the trial the jury found (1) that the alleged misrepresentations were made by the female defendant to the plaintiff; (2) that the alleged misrepresentations were not made by her as agent for her husband, that they were not made at his instigation, but that they were made with his knowledge,

VII. Torts of Wife during Coverture—*Continued.*

authority, and acquiescence; (3) that the male defendant derived benefit by receiving £240 from his wife knowing it to be derived from the swindle; (4) that the motive of the male defendant in petitioning for a decree of judicial separation from his wife was to avoid liability.

Upon these findings Lawrence, J., held that the male defendant was liable to the plaintiff for the full amount claimed. On appeal:—

HELD—that there was evidence on which the jury could find that the male defendant and his wife were joint tort-feasors.

Decision of Lawrence, J. (27 T. L. R. 402) affirmed.

BERDETT v. HORNE, 28 T. L. R. 83—C. A.

VIII. GIFTS BETWEEN HUSBAND AND WIFE.

See also No. 3, *supra*; BANKRUPTCY, No. 25.

9. *Benefit Conferred on Husband by Wife out of Her Own Property—Transfer of Wife's Money into Joint Names of Husband and Wife—Intention—Evidence—Joint Tenancy.*—A., who carried on business in a small shop and was possessed of £1,200 in money, married B., a workman earning wages. According to evidence which the Court believed and acted upon, A., both before and after marriage, announced her intention, in the presence of B., of putting the £1,200 in their joint names, to become the property of the survivor; and she did, in fact, a few days after the marriage, without any solicitation or pressure by B., lodge the money on deposit receipt in the joint names of A. and B.; and in answer to the question "Whose was the money to be?" she said in her evidence, "On both our names to work on it as husband and wife should." After the marriage B. paid his wages to A., and the money on deposit receipt was drawn on from time to time as required for the shop or other expenses, the profits of the shop being lodged from time to time on deposit receipt in the names of A. and B.

HELD—that the money so lodged on deposit receipt was the joint property of A. and B. during their joint lives, and would become the absolute property of the survivor of them.

FOLEY v. FOLEY, [1911] 1 I. R. 281—C. A., [Ireland].

IX. PROCEEDINGS.

(1) Against Husband and Wife.

[No paragraphs in this vol. of the Digest.]

(2) Between Husband and Wife.

[No paragraphs in this vol. of the Digest.]

(3) Wife's Liability for Costs.

10. *Income Restrained from Anticipation—Appointment of Receiver—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11—Notice of Motion—Service—Solicitors on*

the Record—"Final Conclusion of the Cause or Matter"—R. S. C., Ord. 7, r. 3.]—At the trial of an action the plaintiff, who was a married woman, did not appear, and judgment was entered for the defendants with costs which were to be payable out of her separate estate. The only property to which the plaintiff was entitled was the income under her marriage settlement, which she was restrained from anticipating. The defendants' solicitors thereafter wrote to the plaintiff's solicitors informing them that the taxing master's certificate had been obtained, and inquiring whether they had any instructions as to payment of the costs. The plaintiff's solicitors replied that they had no instructions in the matter, and that they did not know the plaintiff's whereabouts. Subsequently, and after the time for appealing from the judgment had expired, the defendants served notice on the plaintiff's solicitors that they intended to apply for payment of the defendants' costs out of the income due to the plaintiff under her marriage settlement, and for the appointment of a receiver of her income up to the amount of the costs:—

HELD—(1) that the notice of motion was properly served on the plaintiff's solicitors, who were the solicitors on the record; and (2) that the order asked for should be made.

BAGLEY v. MAPLE & Co., LD., 27 T. L. R. 284—[Scrutton, J.]

X. SEPARATION DEEDS.

11. *Agreement for Separation—Covenant by Husband for Allowance to Wife—Consideration—Wife Refraining from Taking Legal Proceedings against Husband.*—A deed of separation was entered into between a husband and wife after the latter had been subjected to treatment at the hands of her husband which would have justified her in taking proceedings for assault against him before a magistrate. Such proceedings were not in fact taken. By the terms of the deed of separation the husband agreed to make his wife a weekly allowance. In an action by the wife to recover arrears of the allowance due to her:—

HELD—that the fact that the wife refrained from taking proceedings against her husband when she was legally entitled to do so was a sufficient consideration to support the agreement for separation, which was accordingly not void as being against public policy, and that the defendant was liable thereunder upon his covenant to make his wife an allowance.

HULSE v. HULSE, 103 L. T. 804—Div. Ct.

12. *Provision for Payments to Wife—Effect of Bankruptcy of Husband.*—Amounts payable to a wife under a covenant contained in a deed of separation do constitute a debt or liability provable in the husband's bankruptcy. Where, therefore, the husband has become a bankrupt no action can be maintained by the wife against him either for arrears or future payments.

Linton v. Linton ((1885) 15 Q. B. D. 239) distinguished.

Ex parte Bates ((1879) 11 Ch. D. 914) and

X. Separation Deeds—Continued.

Ex parte Neal, In re Batey ((1880) 14 Ch. D. 579) followed.

Decision of *Darling, J.* (27 T. L. R. 581) reversed.

VICTOR v. VICTOR, 28 T. L. R. 131—C. A.

13. Maintenance — Dum Casta Clause in Recital but not in Covenant to Pay—Construction.—A separation deed recited that the husband had agreed to pay a weekly sum for maintenance of the wife so long as she should remain chaste. But the covenant to pay the sum in the operative part of the deed contained no reference to continuance of the wife's chastity.

HELD—that the recital, being clear, governed the construction of the deed and that the husband was not liable under it for maintenance of the wife after she had committed adultery.

CROUCH v. CROUCH, 132 L. T. Jo. 202; 46 [L. J. N. C. 805—Div. Ct.]

XI. MATRIMONIAL CAUSES IN THE HIGH COURT.

See also CONFLICT OF LAWS, No. 7.

(1) Alimony and Maintenance.

14. Restitution of Conjugal Rights—Subsequent Decree for Judicial Separation—Application for Permanent Alimony—Conduct of Wife.—The conduct of the wife may be looked at when the Court is asked to order permanent alimony, just as it may be considered upon an application for alimony *pendente lite*.

A wife obtained a decree of restitution of conjugal rights, which the husband disobeyed. The wife thereupon obtained a decree of judicial separation. She was afterwards convicted of fraud and sentenced to penal servitude. She had also been convicted of fraud before her marriage, and the husband alleged that he had suffered great financial losses by reason of her conduct. On an application by her for permanent alimony, she having no means of her own:—

HELD—that the Court had jurisdiction, notwithstanding the wife's conduct, to order an inquiry as to granting her permanent alimony, but that the whole of the circumstances should be taken into account on the inquiry.

LESLIE v. LESLIE, [1911] P. 203; 80 L. J. P. 139; *sub nom.* L. C. L. (No. 2), 104 L. T. 462; 27 T. L. R. 316; 55 Sol. Jo. 386—Evans, Pres.

15. Nullity—Permanent Maintenance—Dum Sola Clause—Reduced Amount on Remarriage—Matrimonial Causes Act, 1907 (7 Edw. 7. c. 12).—The Court has power in nullity suits to fix permanent maintenance *dum sola*, and to reduce amount on remarriage.

MARIGOLD (OTHERWISE EVANS) v. MARIGOLD, [55 Sol. Jo. 387—Evans, Pres.]

(2) Costs.

See also No. 6, *supra*; No. 40, *infra*.

16. Application to Dismiss Wife's Petition—Change of Solicitors for Petitioner—First Solicitor's Costs—Divorce Rules, 151, 155.—In a

suit for judicial separation at the instance of the wife, notice was given on December 21st, 1910, of a change of solicitors by the petitioner. Thereafter the parties resumed cohabitation, and the respondent applied to have the petition dismissed.

HELD—that the application should be refused until security was given for, or actual payment was made of, the costs incurred on behalf of the wife by her first solicitor.

JINKS v. JINKS, [1911] P. 120; 80 L. J. P. 81; 104 L. T. 655; 27 T. L. R. 326; 55 Sol. Jo. 366—Evans, Pres.

17. Husband's Petition—Dismissal of Petition with Costs—Non-Payment by Husband—Second Petition by Husband—Stay of Proceedings Until Payment.—A husband who has brought an unsuccessful petition for divorce against his wife will not be allowed to proceed with a second petition until he has paid the wife's costs of the first petition.

Adultery with a different co-respondent is not a different cause of action.

Kemp-Welch v. Kemp-Welch ([1910] P. 233) applied.

Yeatman v. Yeatman ((1869) 39 L. J. (P. & M.) 37) overruled.

SANDERS v. SANDERS, [1911] P. 101; 80 L. J. P. 44; 104 L. T. 231; 55 Sol. Jo. 312—C. A.

18. Condonation after Decree Nisi—Costs against Co-respondent—Decree Nisi Rescinded.—A decree *nisi* for dissolution of marriage was obtained by a husband, with costs against the co-respondent. These costs had not been paid. Before the decree was made absolute the parties proposed to resume cohabitation.

HELD, on the application of the petitioner and respondent—that the decree *nisi* should be rescinded and the petition dismissed, and, further, that the co-respondent should be condemned in the costs of the petition as taxed.

QUARTERMAINE v. QUARTERMAINE AND GLENISTER, [1911] P. 180; 80 L. J. P. 89; 105 L. T. 80; 27 T. L. R. 458; 55 Sol. Jo. 522—Deane, J.

19. Co-respondent a Minor—Non-appearance—Order for Costs against Him.—Notwithstanding that he was a minor, a co-respondent, who had not appeared to a citation by a husband seeking a divorce, was condemned in the costs of the suit.

BROCKELBANK v. BROCKELBANK AND BORLASE, 27 T. L. R. 569; 55 Sol. Jo. 717—Evans, Pres.

20. Costs Incurred by Wife—Costs Unpaid—Interest of Husband in Reversion—Injunction.—In a suit at the instance of the wife for divorce an order was made on the husband to pay a certain sum in respect of the wife's costs, and to give security for a further sum. The order was served on the husband's solicitor, but it was not possible to serve the husband himself as he had gone out of the jurisdiction. The husband had no property in this country on which execution

XI. Matrimonial Causes in the High Court— *Continued.*

could be levied to pay those costs, but he had a reversionary interest under his father's will which he had partially charged and which he had expressed his intention of further charging. On an application by the wife to restrain the trustees of the husband's father's will from paying over, and the husband and his agents from receiving, charging or dealing with the property in question:—

HELD—that an injunction should be granted.

DOOLEY v. DOOLEY, 28 T. L. R. 113—Deane, J.

(3) Cruelty.

21. Communication to Wife of Venereal Disease—No Affirmative Proof that Disease was Knowningly, Wilfully, or Recklessly Communicated.—A wife who petitions for divorce establishes *prima facie* a charge of legal cruelty against her husband when she proves that she is a guiltless woman, and that a venereal disease has in fact been communicated to her by him. When such a *prima facie* case has been established, it is for the husband, if he can, to prove that he was ignorant or innocent, or otherwise not guilty of the legal cruelty charged against him.

Morphett v. Morphett ((1869) L. R. 1 P. & D. 702) not followed.

BROWNING v. BROWNING, [1911] P. 161; 80 [L. J. P. 74; 104 L. T. 750; *sub nom.* B. v. B., 55 Sol. Jo. 462—Evans, Pres.

(4) Custody of Children.

[No paragraphs in this vol. of the Digest.]

(5) Damages.

[No paragraphs in this vol. of the Digest.]

(6) Desertion.

See also No. 26, *infra*.

22. Statutory Period of Desertion—Effect of Proceedings for Judicial Separation—Supplemental Petition for Divorce—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 27.]—The filing and prosecution of a suit for judicial separation precludes the petitioner from successfully pleading that the period of desertion was running during the time the suit was being maintained.

Lapington v. Lapington ((1888) 14 P. D. 21) and **Kay v. Kay** ([1904] P. 382) approved.

Decision of Deane, J., affirmed.

STEVENSON v. STEVENSON, [1911] P. 191; 80 [L. J. P. 137; 105 L. T. 183; 27 T. L. R. 547—C. A.

23. Statutory Desertion—Non-compliance with Decree for Restitution of Conjugal Rights—Revival of Condoned Adultery—Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), s. 5.]—The matrimonial offence of desertion created by reason of non-compliance with a decree for

restitution of conjugal rights revives condoned adultery.

PRICE v. PRICE AND BROWN, [1911] P. 201; 80 [L. J. P. 145; 105 L. T. 441; 27 T. L. R. 560; 55 Sol. Jo. 689—Evans, Pres.

(7) Discretion of Court.

24. Wife Petitioner—Adultery of Petitioner—Concealment of Material Facts—Decree Nisi Made Absolute—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.]—In this case the Court, in exercise of its discretion under sect. 31 of the Matrimonial Causes Act, 1857, in exceptional circumstances made absolute a decree *nisi* of divorce although the petitioner, the wife, had been guilty of adultery and had not disclosed that fact when the decree *nisi* was granted.

PRETTY v. PRETTY (KING'S PROCTOR SHOWING [CAUSE]), [1911] P. 83; 80 L. J. P. 19; 104 L. T. 79; 27 T. L. R. 169—Deane, J.

25. Wife Petitioner—Adultery and Desertion of Husband—Adultery of Wife—Condonation—Conduct Leading to Adultery—Delay—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.]—In the exercise of its discretion under sect. 31 of the Matrimonial Causes Act, 1857, the Court is not bound by any rigid rules, but will consider every case entirely upon its own merits.

BULLOCK v. BULLOCK, 103 L. T. 847—Evans, [Pres.

26. Intervention of King's Proctor—Desertion by Petitioner.]—The Court, while allowing an intervention by the King's Proctor, exercised its discretion in favour of the petitioner, who had been guilty of desertion, but ordered him to pay a weekly sum to the respondent, with liberty to apply to rescind or vary that order.

FREEMAN v. FREEMAN AND FREEMAN, 105 [L. T. 383; 27 T. L. R. 523—Evans, Pres.

(8) Foreign Divorce.

[No paragraphs in this vol. of the Digest.]

(9) Judicial Separation.

See No. 22, *supra*.

(10) Jurisdiction.

[No paragraphs in this vol. of the Digest.]

(11) Nullity of Marriage.

See also No. 15, *supra*.

27. Petition by Husband—No Cohabitation—Separation of Spouses—Incapacity Inferred.]—In a petition for nullity by a husband where there had been no cohabitation the Court inferred the incapacity of the wife by her persistent refusal to consummate the marriage.

C. v. C., otherwise **H.**, 27 T. L. R. 421—[Deane, J.

28. Incapacity—Non-consummation—Absence of Cohabitation.]—Circumstances in which the Court inferred the incapacity of the wife by

XI. Matrimonial Causes in the High Court— Continued.

her persistent refusal to consummate the marriage.

F. v. F., otherwise P., 27 T. L. R. 429; 55 [Sol. Jo. 482—Deane, J.

(12) Practice.

See also Nos. 16, 18, *supra*; No. 35, *infra*.

(a) Appeals and New Trials.

[No paragraphs in this vol. of the Digest.]

(b) Arrangement of Lists.

[No paragraphs in this vol. of the Digest.]

(c) Contents of Petition.

[No paragraphs in this vol. of the Digest.]

(d) Delay.

See No. 25, *supra*; No. 29, *infra*.

(e) Divorce Bill.

29. Divorce (Ireland)—Delay—Evidence.—The House of Lords excused the petitioner's delay, due to reluctance to take proceedings for divorce in the lifetime of her father, a member of the Society of Friends, and also to lack of means.

The House dispensed with some of the evidence, as the petitioner had already got a decree in Dublin.

MAXWELL'S DIVORCE BILL, [1911] W. N. 220—[H. L. (I.)

(f) Evidence.

30. Divorce—Cross-Examination of Respondent—Pleas of Connivance and Conduct conducing to Adultery—Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 68), s. 3.—Where, in a suit for dissolution of marriage brought by a husband, the wife goes into the witness-box and gives evidence of her own adultery in support of pleas of connivance and conduct conducing to adultery raised by her answer, she may be asked questions in cross-examination relating to the time and circumstances of such adultery.

RUCK v. RUCK AND CROFT, [1911] P. 90; 80 [L. J. P. 17; 104 L. T. 462; 27 T. L. R. 191—Evans, Pres.

(g) Hearing.

31. Proceedings Heard in Camera—Disclosure of Details—Contempt of Court.—It is contempt of Court to disclose the details of proceedings heard in camera.

SCOTT v. SCOTT, [1912] P. 4; 28 T. L. R. 127—[Deane, J.

(h) Interlocutory Proceedings.

32. Discovery—Notes made by Medical Man.—Where a husband, respondent in a divorce suit, asked for discovery of notes made by a medical man who had attended the wife-petitioner, the Court refused to make an order. D. v. D., 55 Sol. Jo. 331—Evans, Pres.

(i) Intervention of Third Party.

See No. 26, *supra*.

(j) Notice, Service and Stay of Proceedings.

See No. 17, *supra*; No. 39, *infra*.

(k) Miscellaneous.

33. Divorce—Particulars—Explanatory Affidavit in Default of Further and Better Particulars—Sufficiency.—In a petition for divorce the petitioner alleged adultery by the respondent at two addresses between various dates. On an application for further and better particulars, the Registrar ordered particulars of "dates and times of day, or explanatory affidavit." The petitioner's solicitor filed an affidavit that he personally or through his agent had caused the witnesses who would be subpoenaed to be carefully questioned and that they were unable to fix the dates.

HELD—that a person who swears an explanatory affidavit must himself have seen and questioned the witnesses; and therefore that the affidavit sworn by the petitioner's solicitor was insufficient.

C. v. C. AND M., 27 T. L. R. 161; 55 Sol. Jo. [141—Deane, J.

34. Husband's Petition for Divorce—Death of Co-respondent after Appearance—Order Dismissing Co-respondent from Suit.—Charge of Adultery with Co-respondent Proceeded with.—In a husband's petition for divorce an appearance was entered for the co-respondent L. Shortly thereafter L. died, and an order was made that he should be dismissed from the suit.

HELD—that notwithstanding that order, the charge of adultery by the respondent with L. could be gone into at the trial.

WIGGLESWORTH v. WIGGLESWORTH, BENNETT, [SMITH, AND OTHERS, 27 T. L. R. 463—Horridge, J.

(13) Divorce.

See Nos. 22, 23, 24, 29, 34, *supra*.

XII. PROTECTION CHILD.

[No paragraphs in this vol. of the Digest.]

XIII. RESTITUTION OF CONJUGAL RIGHTS.

[No paragraphs in this vol. of the Digest.]

XIV. VARIATION OF SETTLEMENTS.

See also SETTLEMENTS, No. 6.

35. Practice—Decree Nisi—Petition for Variation Filed before Decree Absolute—Time for Answering—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.—A petition to vary a settlement under the Matrimonial Causes Act, 1859, may be filed before a decree absolute has been made, but the Court has no jurisdiction to entertain the petition till after the decree absolute. Consequently, till the decree absolute has been made, a respondent cannot be compelled to answer the petition.

CLARKE v. CLARKE AND LINDSAY, [1911] P. [186; 80 L. J. P. 135; 105 L. T. 1; 55 Sol. Jo. 535—C. A.

XV. SUMMARY PROCEEDINGS IN MATRIMONIAL CAUSES.

(a) Cruelty and Drunkenness.

[No paragraphs in this vol. of the Digest.]

(b) Desertion.

See Nos. 36, 37, *infra*.

(c) Evidence.

[No paragraphs in this vol. of the Digest.]

(d) Jurisdiction.

36. Second Summons for Same Cause of Complaint—*Res Judicata*—*Desertion*—*Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39).]—A wife, whose summons, under the Summary Jurisdiction (Married Women) Act, 1895, has been heard and dismissed, cannot obtain an order on a second summons founded on the same cause of complaint. The matter is *res judicata*; and this is so where the cause of complaint is desertion, notwithstanding that desertion is a continuing offence.

STOKES v. STOKES, [1911] P. 195; 80 L. J. P. [142; 105 L. T. 416; 75 J. P. 502; 27 T. L. R. 553; 55 Sol. Jo. 690—Div. Ct.

37. Desertion by Husband—Order—Non-cohabitation Clause—*Application by Husband to Strike out Clause*—*Power of Court to vary Order*—*Summary Jurisdiction (Married Women Act, 1895* (58 & 59 Vict. c. 39), ss. 4, 5 (a).]—A husband was adjudged by justices to be guilty of desertion and ordered to pay a weekly sum to his wife, and a non-cohabitation clause was inserted in the order by virtue of sect. 5 of the Summary Jurisdiction (Married Women) Act, 1895.

HELD—that the Divisional Court, on the application of the husband, had power to vary the order by striking out the clause.

DUNNING v. DUNNING, 27 T. L. R. 534; 55 [Sol. Jo. 650—Div. Ct.

38. Order for Payment of Weekly Sum to Wife—Enforcement of Order—No Sufficient Distress—Conviction—Imprisonment—Proof of Means—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 4—*Summary Jurisdiction Act, 1879* (42 & 43 Vict. c. 49), s. 54—*Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), s. 9.]—Where an order has been made under the Summary Jurisdiction (Married Women) Act, 1895, that a husband shall pay a weekly sum to his wife, such order may be enforced by an order of imprisonment, in default of sufficient distress, without proof that the husband had the means to pay the sum in respect of which he has made default.

R. v. RICHARDSON AND OTHERS, JUSTICES, EX PARTE SHERRY, [1909] 2 K. B. 851; 79 L. J. K. B. 13; 101 L. T. 541; 73 J. P. 434; 25 T. L. R. 711; 22 Cox, C. C. 183—Div. Ct.

(e) Maintenance.

[No paragraphs in this vol. of the Digest.]

(f) Practice.

See also No. 37, *supra*.

39. Husband's Appeal from Order of Justices—Security for Costs—Staying Appeal—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).]—On an appeal by a husband from an order made by justices under the Summary Jurisdiction (Married Women) Act, 1895, the Court, on the application of the wife, made an order for security for costs, and stayed the hearing of the appeal until security was given, or money paid into Court.

SIRRELL v. SIRRELL, [1911] P. 38; 80 L. J. P. [8; 104 L. T. 79; 27 T. L. R. 155—Deane, J.

40. Husband's Appeal from Order of Justices—Application for Security by Wife—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).]—Where a husband, possessed of means, appealed from an order of a Court of Summary Jurisdiction, an application by the wife, without means, that the husband should find security for her costs of appeal was granted.

L. v. L. (No. 1), 55 Sol. Jo. 330—Evans, Pres.

IDIOTS.

See LUNATICS AND PERSONS OF UNSOUND MIND.

ILLEGAL ARREST AND IMPRISONMENT.

See CRIMINAL LAW AND PROCEDURE; TRESPASS.

ILLEGITIMACY.

See BASTARDY.

IMBECILITY.

See LUNATICS.

IMMIGRATION.

See ALIENS.

IMMORAL CONTRACTS.

See CONTRACT.

IMPRISONMENT.

See CRIMINAL LAW AND PROCEDURE;
PRISONS AND REFORMATORIES.

INCLOSURE.

See COMMONS; COPYHOLDS; HIGHWAYS;
OPEN SPACES.

INCOME AND CAPITAL.

See REAL PROPERTY AND CHATTELS
REAL; SETTLEMENTS; TRUSTS;
WILLS.

INCOME TAX.

	COL.
I. TAXABLE INCOME.	
(a) In General	277
(b) Profits earned Abroad	278
II. ASSESSMENT AND COLLECTION.	
(a) In General	279
(b) Deductions	280
III. DEDUCTION OF TAX FROM RENT OR ANNUAL PAYMENTS	282

I. TAXABLE INCOME.**(a) In General.**

1. *Undertakings of Corporation—Charge Thereon—Income Tax on Aggregate Revenue—Statutory Dividends Fund Account—Transfer to, from Undertakings and Rates—Loans Charged on all Undertakings and Revenues—Income Brought into Charge—Leeds Corporation (General Powers) Act, 1901.*—The Leeds Corporation owned various undertakings—namely, waterworks, gasworks, tramways, markets, and electric lighting, and certain properties. In respect of their undertakings and properties the corporation received an income of £270,036, and on that, under Sched. A, they paid income tax. The sum of £285,446 was paid by the corporation to its stockholders for dividends during the year in question, and it deducted and retained from the stockholders the income tax thereon. This sum of £285,446 was paid out of a statutory dividends fund account, and sums of money amounting to £285,446 were paid into such fund account, from the separate accounts kept for the waterworks, gasworks, tramways, and electricity undertakings, and the city fund and rate, and the consolidated rate fund. There was an aggregate excess of taxed income in respect of the waterworks, gasworks and tramways undertakings, and the city fund and rate of £78,519 over and above the amounts appearing in the statutory dividends funds account as appropriated from the separate accounts.

HELD—on construction of the Leeds Corporation (General Powers) Act, 1901, that the sum of £78,519 consisted of profits and gains brought already into charge as being included in the sum of £270,036; and that the corporation were therefore not liable for income tax on this £78,519, but merely in respect of the sum by which the sum of £285,446 exceeded the sum of £270,036.

Decision of Hamilton, J. (104 L. T. 166; 9 L. G. R. 461) reversed (Kennedy, L.J., dissenting).

LEEDS CORPORATION v. SUGDEN, 105 L. T. 489
[—C. A.]

(b) Profits Earned Abroad.

2. *Dividends on Investments Abroad—Not Remitted to United Kingdom—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sched. D.*—The appellants, a limited company, carrying on the business of fire insurance in the United Kingdom and abroad, but having the principal direction of the business in the United Kingdom, invested money which they did not require for the current discharge of their liabilities in securities abroad. Some of these investments were voluntary, and others represented money deposited by the company with Governments of foreign countries as a condition of carrying on insurance business in those countries. The dividends and interest on both classes of investments were received by the company abroad, but were not remitted to the United Kingdom.

HELD—that both classes of investments were made in the way of the appellants' business, and that the interest and dividends arising therefrom were profits or gains arising from such business and assessable to income tax.

LIVERPOOL, LONDON, AND GLOBE INSURANCE [CO. v. BENNETT, [1911] 2 K. B. 577; 80 L. J. K. B. 1269; 105 L. T. 162; 27 T. L. R. 369; BRICE v. OCEAN ACCIDENT AND GUARANTEE CORPORATION, L.D., BRICE v. NORTHERN ASSURANCE Co., 105 L. T. 162—Hamilton, J.]

3. *Person "Residing" in the United Kingdom—Foreign Citizen Living on Yacht Anchored in British Port—Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. D.*—The appellant, a citizen of the United States of America, lived for about 20 years on board his yacht, which during that period had been anchored in tidal waters near the shore within the port of Colchester. The yacht had always been manned by a proper yachting crew, and her machinery and boilers were always kept in a sea-going condition.

HELD—that the appellant was a person "residing in the United Kingdom" within the meaning of Sched. D to the Income Tax Act, 1853, and therefore was liable to pay income tax on remittances received in the United Kingdom from abroad.

Decision of Hamilton, J. (27 T. L. R. 363) affirmed.

BROWN v. BURT, 81 L. J. K. B. 17; 105 L. T. 420; 27 T. L. R. 572—C. A.]

I. Taxable Income—Continued.

4. Person Not Resident in United Kingdom—Whether Trade Exercised in United Kingdom—Agent having Receipt of Profits or Gains—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 41—Income Tax Act, 1853 (16 & 17 Vict. c. 34), ss. 2, 5, Sched. D.]—A French company owned mines in Algeria from which it exported phosphates to the United Kingdom. The contracts for the sale of the phosphates were entered into in the United Kingdom by agents of the company who were resident there. The agents had authority to sell the phosphates at any price above a minimum fixed by the company. Contracts made by the agents within the scope of their authority were binding on the company without confirmation. The agents were remunerated by a commission on the selling price of the goods which was remitted to them by the company. The delivery of the phosphates took place outside the United Kingdom. The contracts provided that the price of the goods should be payable in cash in London. In practice the payment was made by means of crossed cheques. The ordinary course of business was that cheques were drawn in favour of the company, but they were occasionally drawn in favour of the agents. The agents did not cash any cheques, but sent them on to the company endorsing them when necessary. The company had no stock of goods, no bank account, and no branch office in the United Kingdom, and its name did not appear on any premises or in any directory as carrying on business there.

HELD (Lord Dundas dissenting)—that the company did not exercise a trade in the United Kingdom within sect. 2, Sched. D, of the Income Tax Act, 1853.

HELD, FURTHER—that the agents were not agents having the receipt of profits or gains belonging to the company within sect. 41 of the Income Tax Act, 1842, as amended by sect. 5 of the Income Tax Act, 1853.

CROOKSTON BROTHERS v. INLAND REVENUE, [1911] S. C. 217; 48 Sc. L. R. 134—Ct. of Sess.

II. ASSESSMENT AND COLLECTION.

(a) In General.

5. Continuity of Business—Single Ship Company—Ship Lost—Power to Acquire Another Ship.]—A company was formed to purchase and trade with a steamship, and, in the event of her loss or sale, to acquire some other steamship, "but so that the company shall not own at any one time more than one ship."

The company purchased the *M.* in 1901, and traded with her till April 1st, 1906, when she was lost at sea. With the insurance moneys the company purchased the *V.*, and she commenced her voyages on October 17th, 1906.

HELD—that the company were carrying on one business throughout, and that a new business was not started when the *M.* was lost and the *V.* was acquired.

MERCHANTS STEAMSHIP CO., LD. v. TURNER, [1910] 2 K. B. 923; 80 L. J. K. B. 145; 102 L. T. 363; 11 Asp. M. C. 487—Bray, J.

6. Company Registered Abroad—"Person Residing in the United Kingdom"—Right to Exercise Control in the United Kingdom—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.]—A finding by the Commissioners of Income Tax that a company which is registered abroad is resident in the United Kingdom for the purposes of assessment to income tax, on the ground that the control and directing powers of the company are in England, is, if there is evidence to support it, conclusive.

AMERICAN THREAD CO. v. JOYCE, 104 L. T. 217; [27 T. L. R. 272—Hamilton, J.]

7. Appeal to Income Tax Commissioners—Refusal of Commissioners to Hear Expert Evidence—Mandamus.]—The owner and occupier of licensed premises appealed to the Income Tax Commissioners against the assessment of his premises. He attended and gave evidence before the Commissioners, and his solicitor then stated that he wished to call an expert valuer. The Commissioners said they already had all the facts before them and did not think any further evidence would assist them, and they declined to hear the expert. A rule *nisi* was then obtained calling upon the Commissioners to show cause why they should not hear and determine the appeal according to law.

HELD—that *mandamus* would not lie for the purpose of appealing from the Commissioners' decision as to the non-necessity of hearing the evidence tendered, and that the rule should therefore be discharged.

R. v. GENERAL INCOME TAX COMMISSIONERS FOR [OFFLOW], 27 T. L. R. 353—Div. Ct.

8. Super-Tax—Return for Assessment—Annual Tax—Liability to be Assessed before Passing of Act Authorising the Tax for Year—Budget Resolutions—Customs and Inland Revenue Act, 1890 (53 Vict. c. 8), s. 30.]—The Special Commissioners for the purposes of income tax had power, during the financial year, which commenced on April 6th, 1911, to demand returns for the purposes of assessments to the tax known as the "super-tax," notwithstanding that no such tax had as yet been imposed for the year, and that it was theoretically uncertain whether it would, in fact, be imposed.

BOWLES v. ATTORNEY-GENERAL, 56 Sol. Jo. 176 [—Parker, J.]

(b) Deductions.

9. Tied House—Compensation Levy—Deduction from Brewery Company's Profits and Gains—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3.]—The compensation levy paid by a brewery company under the Licensing Act, 1904, in respect of licensed premises, which the company own and let to tenants as tied houses for a consequently small rent, may be deducted in arriving at the assessable amount of the company's profits and gains under Sched. D to the Income Tax Acts, inasmuch as it is a payment essential to the earning of their profits.

II. Assessment and Collection —Continued.

SO HELD by Lord Halsbury and Lord Atkinson (Lord Loreburn, L.C., and Lord Shaw dissenting).

There being an equal division of opinion, the appeal was dismissed without costs.

Decision of C. A. ([1909] 2 K. B. 912; 78 L. J. K. B. 1089; 101 L. T. 145; 73 J. P. 447; 25 T. L. R. 748; 53 Sol. Jo. 696; 16 Manson, 326) affirmed.

SMITH v. LION BREWERY CO., LD., [1911] A. C. [150; 80 L. J. K. B. 566; 104 L. T. 321; 75 J. P. 273; 27 T. L. R. 261; 55 Sol. Jo. 269; 48 Sc. L. R. 1083—H. L.

10. Interest on Short Loans—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100; Sched. D. First Case, r. 3.]—A financial and investment company, in striking the balance of its profits or gains, is entitled to debit its profits with interest paid to bankers on short loans, as such loans are not “sums employed or intended to be employed as capital” in its business within the meaning of the Income Tax Acts.

Decision of Ct. of Sess. ([1910] S. C. 966; 47 Sc. L. R. 832) affirmed.

FARMER v. SCOTTISH NORTH AMERICAN TRUST, [LD., 132 L. T. Jo. 177—H. L. (Sc.)

11. Rents and Profits of Lands Vested in Trustees for Charitable Purposes Trustees in Occupation—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, No. VI., Sched. A.]—Trustees in whom lands, tenements, hereditaments, or heritages are vested for charitable purposes, or a charitable corporation, not being a college or hall, hospital, public school or almshouse, are not entitled to the allowances given by sect. 61, No. VI., Sched. A, of the Income Tax Act, 1842, in respect of property in their own occupation.

Maugham v. Free Church of Scotland (1893) 20 R. (Ct. of Sess.) 759 followed.

Decision of Div. Ct. (80 L. J. K. B. 788; 104 L. T. 31; 75 J. P. 155; 27 T. L. R. 190) reversed.

R. v. SPECIAL COMMISSIONERS OF INCOME TAX, [EX PARTE ESSEX HALL, [1911] 2 K. B. 434; 80 L. J. K. B. 1035; 104 L. T. 764; 27 T. L. R. 466—C. A.

12. Patent—Royalty—Royalty Ceasing to be Payable—Finance Act, 1907 (7 Edw. 7, c. 13), s. 25, sub-s. 1.]—By sect. 25, sub-sect. 1, of the Finance Act, 1907, it is provided that “in estimating, under any schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty, or other sum, paid in respect of the user of a patent.” The sub-section continues thus: “but the person paying the royalty or sum shall be authorised, on making the payment, to deduct and retain thereout the amount of the rate of income tax chargeable during the period through which the royalty or sum was accruing due”:—

HELD—that the first part of the sub-section does not apply where by arrangement between the person owning and the person using the patent all royalties and other sums in respect of the user thereof have ceased to be payable before the year of assessment.

Decision of Hamilton, J. ([1911] 2 K. B. 15; 80 L. J. K. B. 951; 104 L. T. 503), reversed.

LANSTON MONOTYPE CORPORATION, LD. v. [ANDERSON, [1911] 2 K. B. 1019; 80 L. J. K. B. 1351; 105 L. T. 398—C. A.

13. Insurance Company—Fire Insurance Premiums—Unexpired Risks.]—In calculating the amount of its yearly profits assessable to income tax, a company which was carrying on the business of fire insurance was held not to be entitled to deduct from its yearly premium receipts, or make any allowance in respect of, estimated risks unexpired at the end of the year.

General Accident, Fire, and Life Assurance Corporation, LD. v. McGowan ([1908] A. C. 207) considered and applied.

Decision of Bray, J. (102 L. T. 336; 26 T. L. R. 341) reversed.

CLARK v. SUN INSURANCE OFFICE, 104 L. T. [520; 27 T. L. R. 392—C. A.

III. DEDUCTION OF TAX FROM RENT OR ANNUAL PAYMENTS.

See also BANKRUPTCY, No. 9.

14. Purchase of Tramway Undertaking by Local Authority—Lease to Another Local Authority—Rent Calculated with Reference to Payment of Purchase Price in Instalments by Lessor—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40.]—It was agreed between the Corporations of B. and P. that the P. Corporation should purchase a certain tramway undertaking, and should grant a lease thereof for thirty years to the B. Corporation at a rent which would be sufficient to enable the P. Corporation to repay the principal of the loan to be raised by them to purchase the undertaking and the interest thereon by equal half-yearly instalments of such principal and interest within the period of thirty years. The B. Corporation claimed, in paying the rent, to be entitled to deduct income tax under sect. 40 of the Income Tax Act, 1853, on the whole amount of the half-yearly instalments paid by them.

HELD—that upon the true construction of the agreement the rent was fixed without relation to income tax, and that the B. Corporation were entitled to deduct such tax from the rent under sect. 40 of the Income Tax Act, 1853, and that the payment of rent after such deduction amounted in law to payment of the full rent so as to discharge their obligations under the agreement.

Serbiton Urban District Council v. Callender Cable and Construction Co., LD. ((1910) 8 L. G. R. 244) followed.

POOLE CORPORATION v. BOURNEMOUTH CORPORATION, 103 L. T. 828; 75 J. P. 13—Neville, J.

III. Deduction of Tax from Rent or Annual Payments—*Continued.*

15. *Annuity—Trust—Covenant to Pay Annuity—Deduction of Income Tax.*—By his marriage settlement the husband covenanted that if during the widowhood of his wife the income of his wife's trust fund in any year should not amount to the clear annual sum of £2,000 his executors should in every such year pay to his widow such a sum as would make up the income to £2,000.

Held—that the executors were entitled to deduct income tax on the amount by which the gross income of the wife's trust fund fell short of £2,000, the testator's estate being liable for the amount which would with income tax thereon bring that gross income up to £2,000 in each year.

IN RE COOPER'S ESTATE, 55 Sol. Jo. 522—
[Eve, J.]

Amount to be ascertained—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 25 (1).]—Sect. 25, sub-sect. 1, of the Industrial and Provident Societies Act, 1893, enables a member of a registered society to nominate a person or persons to or among whom his property in the society shall be transferred at his decease, provided the amount credited to him in the books of the society does not then exceed £100 sterling.

Held (Farwell, L.J., dissenting)—that the time at which the limit of amount fixed by the section is to be taken is the date of nomination and not the date of the nominator's death.

Decision of Avory, J., affirmed.

GRIFFITHS v. ECCLES PROVIDENT INDUSTRIAL [CO-OPERATIVE SOCIETY, LD., [1911] 2 K. B. 275; 80 L. J. K. B. 1011; 101 L. T. 798; 27 T. L. R. 375; 55 Sol. Jo. 410—C. A.]

INCORPOREAL HEREDITA- MENTS.

See REAL PROPERTY AND CHATTELS
REAL.

INDECENT ASSAULT.

See CRIMINAL LAW AND PROCEDURE.

INDECENT EXPOSURE.

See CRIMINAL LAW AND PROCEDURE.

INDEMNITY.

See BANKRUPTCY, No. 26; CRIMINAL
LAW, No. 57; TRUSTS, No. 1.

INDIA.

See DEPENDENCIES AND COLONIES.

INDICTMENTS AND IN- FORMATIONS.

See CRIMINAL LAW AND PROCEDURE.

INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.

1. *Nomination by Member of Person to Re-
ceive Benefits—Limit of Amount—At what Date*

INDUSTRIAL SCHOOLS.

See PRISONS AND REFORMATORIES.

INEBRIATES.

See INTOXICATING LIQUORS.

INFANTS.

I. CUSTODY OF INFANTS	COL. 284
[No paragraphs in this vol. of the Digest.]	
II. GUARDIANSHIP	285
[No paragraphs in this vol. of the Digest.]	
III. LIABILITY OF INFANTS.	
(a) Contracts	285
(b) Necessaries	285
[No paragraphs in this vol. of the Digest.]	
(c) Torts	285
[No paragraphs in this vol. of the Digest.]	
(d) Miscellaneous	285
[No paragraphs in this vol. of the Digest.]	
IV. PROPERTY OF INFANTS	285
[No paragraphs in this vol. of the Digest.]	
V. GENERALLY	285
[No paragraphs in this vol. of the Digest.]	
VI. CHILDREN ACT, 1908	285
For Cruelty to Children and Offences under the Children Act, 1908, see also CRIMINAL LAW, II. (h.), II. (v.); INTOXICATING LIQUORS, V.	

See also CRIMINAL LAW, No. 82; DEPENDENCIES, No. 37; GUARANTEE, No. 1; MAGISTRATES, No. 21; MASTER AND SERVANT, Nos. 34, 36, 124; POOR LAW, No. 8; WILLS, No. 50.

I. CUSTODY OF INFANTS.

[No paragraphs in this vol. of the Digest.]

II. GUARDIANSHIP.

[No paragraphs in this vol. of the Digest.]

III. LIABILITY OF INFANTS.*See also* HUSBAND AND WIFE, No. 19.**(a) Contracts.***See* MASTER AND SERVANT, No. 133.**(b) Necessaries.**

[No paragraphs in this vol. of the Digest.]

(c) Torts.

[No paragraphs in this vol. of the Digest.]

(d) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

IV. PROPERTY OF INFANTS.

[No paragraphs in this vol. of the Digest.]

V. GENERALLY.

[No paragraphs in this vol. of the Digest.]

VI. CHILDREN ACT, 1908.*See also* CRIMINAL LAW, No. 82; and, for Criminal Offences, CRIMINAL LAW, II (b), II. (v).

1. *Citation of Father of Child Charged with Offence—Attendance of Father of Accused at Court—Children Act, 1908* (8 Edw. 7, c. 67), s. 98.]—The Children Act, 1908, sect. 98, sub-sect. 1, provides that where a child is charged with any offence, or brought before a petty sessional court on an application for an order to send him to a certified industrial school, his parent or guardian shall, if he can be found and resides within a reasonable distance, be required to attend at the court, unless the court is satisfied that it would be unreasonable to require his attendance.

HELD—that it is unnecessary to formally cite a parent to attend the court along with his child so long as he receives reasonable notice of the trial.

WHITE v. JEANS, [1911] S. C. (J.) 88; 48 Sc. [L. R. 825—Ct. of Justy.]

2. *Insuring Life of Infant Taken in to Nurse—Statutory Offence—Paying Premiums due on Policy Effected Prior to Commencement of Act—Children Act, 1908* (8 Edw. 7, c. 67), s. 7.]—Sect. 7 of the Children Act, 1908, provides that a person who undertakes the nursing and maintenance of an infant under seven years of age for reward "shall be deemed to have no interest in the life of the child, . . . and if any such person directly or indirectly insures or attempts to insure the life of such infant he shall be guilty of an offence. . . ."

HELD—that it was not a contravention of the statute for a person, who had undertaken the care of an infant and insured its life prior to the commencement of the Act, to continue to pay the premiums due under the policy after the Act came into force.

GLASGOW PARISH COUNCIL v. MARTIN, [1910] S. C. (J.) 102; 47 Sc. L. R. 773; 6 Adam, 276—Ct. of Justy.]

INFECTIOUS DISEASES.*See* ANIMALS; PUBLIC HEALTH.**INHABITED HOUSE DUTY.***See* INCOME TAX.**INHERITANCE.***See* DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.**INJUNCTIONS.**

	COL.
I. INTERLOCUTORY	286
II. MANDATORY	286
III. GENERAL	286

[No paragraphs in this vol. of the Digest.]

See also COMPANIES, Nos. 18, 49; COPYRIGHT, No. 5; PRESS, No. 1; TELEGRAPHS AND TELEPHONES, No. 1; TRADE MARKS, No. 6; WATERS, No. 5.

I. INTERLOCUTORY.*See* LANDLORD AND TENANT, No. 10.**II. MANDATORY.**

1. *Public Policy—Virisection—Contract for Maintenance of Drinking Fountain Bearing Defamatory Inscription.*—The Court will not enforce by mandatory injunction a contract to maintain a structure which bears an inscription calculated to hold up a public institution to execration and to provoke a breach of the peace.

WOODWARD v. MAYOR, ETC., OF BATTERSEA, [104 L. T. 51; 75 J. P. 193; 27 T. L. R. 196; 9 L. G. R. 218—Neville, J.]

III. GENERAL.

[No paragraphs in this vol. of the Digest.]

INNS AND INNKEEPERS.

	COL.
I. DUTY TO RECEIVE GUESTS	286
[No paragraphs in this vol. of the Digest.]	
II. LIABILITY FOR LOSS OF GOODS	286
[No paragraphs in this vol. of the Digest.]	
III. LIEN	287

I. DUTY TO RECEIVE GUESTS.

[No paragraphs in this vol. of the Digest.]

II. LIABILITY FOR LOSS OF GOODS.

[No paragraphs in this vol. of the Digest.]

III. LIEN.

1. *Money Lent by Innkeeper on Articles brought by Guest.*] The defendants, who were innkeepers, lent money to a guest staying at their hotel on the security of three railway tickets which he had in his possession. The tickets had been stolen from the plaintiff, who now claimed them from the defendants. The defendants set up that they were entitled to a lien upon the tickets as innkeepers.

Held—that the plaintiff was entitled to recover, as the transaction between the defendants and the guest was merely a money-lending transaction, and no question of innkeeper's lien arose.

MATSUDA v. WALDORF HOTEL CO., LD., 27 [T. L. R. 153—Bankes, J.

INNS OF COURT.

See BARRISTERS.

INQUEST.

See CORONERS.

INSANITY.

See LUNATICS.

INSOLVENCY.

See BANKRUPTCY AND INSOLVENCY.

INSURANCE.

	COL.
I. ACCIDENT	288
II. FIRE	289
III. GENERAL	289
IV. LIFE.	
(a) Avoidance of Policy and Recovery of Premium: Insurable Interest	291
(b) "Carrying on Business"	292
[No paragraphs in this vol. of the Digest.]	
(c) Construction of Policy	292
(d) Jurisdiction of Justices	292
[No paragraphs in this vol. of the Digest.]	
(e) Practice	293
[No paragraphs in this vol. of the Digest.]	
(f) Transfer, Mortgage, and Alteration of Rights	293
(g) Miscellaneous	294
[No paragraphs in this vol. of the Digest.]	

V. MARINE.

(a) Brokers' Rights and Liabilities	294
(b) Collision	295
[No paragraphs in this vol. of the Digest.]	
(c) Concealment	295
(d) Construction	296
(e) Damages and Contribution	297
[No paragraphs in this vol. of the Digest.]	
(f) Freight and Cargo	297
(g) General Average	297
[No paragraphs in this vol. of the Digest.]	
(h) Insurable Interest	297
[No paragraphs in this vol. of the Digest.]	
(i) Mortgages and Assignments.	297
[No paragraphs in this vol. of the Digest.]	
(j) Practice	297
[No paragraphs in this vol. of the Digest.]	
(k) Risk : Nature, Duration, Change, etc.	297
(l) Seaworthiness	299
[No paragraphs in this vol. of the Digest.]	
(m) Subrogation	299
[No paragraphs in this vol. of the Digest.]	
(n) Time Policies and Valued Policies	299
(o) Total Loss and Constructive Total Loss	299
(p) Warranty	299
(q) Miscellaneous	299

See also AGENCY, No. 4; GUARANTEE, No. 3; MASTER AND SERVANT, No. 23.

I. ACCIDENT.

1. *Workmen's Compensation — Condition that Names and Wages of Employés be Inserted in Wages-book — Whether Condition Precedent.*] —The claimant entered into a policy of insurance with the respondents against his liability under the Workmen's Compensation Act. The claimant's only employé was his son, who received £75 a year. During the currency of the policy, the son was injured while chopping wood, whereby he lost his hand, and the claimant had to pay him 6s. a week under the Act. This sum he claimed from the respondents under the above policy. The respondents refused to pay on the ground of non-compliance with the following condition in the policy, which, among others, was declared by the policy to be a condition precedent to their liability thereunder:—"The first premium and all renewal premiums that may be accepted are to be regulated by the amount of wages and salaries and other earnings paid to employés by the insured during such period of insurance. The name of every employé and the amount of wages, salary, and other earnings paid to him shall be duly recorded in a proper wages-book. The insured shall at all times allow the society to inspect such books, and shall supply the society with a correct account of all such wages, salary, and other earnings paid during any period of insurance within one month from the expiry of such period of insurance, and if the total amount so paid shall differ from the amount on which

I. Accident—Continued.

premium has been paid the difference in premium shall be met by a further proportionate payment to the society or by a refund by the society as the case may be. The claimant did not, in fact, keep a wages-book.

HELD—that the claimant was entitled to recover, inasmuch as the above-quoted clause was framed with one object, namely, the adjustment of premium, and compliance therewith was not a condition precedent to the liability of the respondents.

BRADLEY v. ESSEX AND SUFFOLK ACCIDENT INSURANCE SOCIETY, LD., 27 T. L. R. 455
—Bray, J.

Affirmed on appeal (Moulton, L.J., dissenting), *Times*, December 2nd, 1911—C. A.

II. FIRE.

See also INCOME TAX, No. 13.

2. *Statutory Condition—Gasoline “Stored or Kept” in Insured Building—Ontario.*—A statutory condition applicable to fire insurance in Ontario provided that the insurance company should not be liable for loss or damage occurring while gasoline was “stored or kept” in the insured building. The appellant insured a building used by him as a drug store and furniture shop. He had an assistant, a qualified chemist, who used the upper part of the building as a dwelling-house. This assistant had a gasoline stove which he had used occasionally for domestic purposes, and later on he brought it down to the shop and used it in making syrups, and while doing so the building took fire and was burnt down. The only gasoline in the building was the small quantity which was in the stove.

HELD—that the expression in the statutory condition as to gasoline being “stored or kept” imported the notion of warehousing or depositing for safe custody or keeping gasoline in stock for trade purposes, and did not apply to the small quantity which was in the stove for consumption, and, consequently, that there had been no breach of the condition and that the appellant was entitled to recover from the insurance company.

Decision of Supreme Court of Canada (41 Can. S. C. R. 491) reversed.

THOMPSON v. EQUITY FIRE INSURANCE CO. [AND UNION FIRE OF CANADA, [1910] A. C. 592; 80 L. J. P. C. 13; 103 L. T. 153; 26 T. L. R. 616; 48 Sc. L. R. 705—P. C.]

III. GENERAL.

3. *Theft—Exception—Theft by Member of Staff—Accessory before the Fact—Principal in the Second Degree.*—A policy issued by the defendant insuring against loss by theft or robbery or burglary contained the following clause:—“Provided always that there shall be no claim on this policy . . . for loss by theft, robbery, or misappropriation by members of the assured’s . . . business staff . . .” A theft of the assured’s goods having been committed by a gang of men who gained admittance to the insured premises through the agency of a porter on the business staff of the assured, who was not present when the theft was committed:—

HELD—that there had been a loss by theft by a member of the assured’s business staff within the meaning of the proviso in the policy, and therefore that the defendant was not liable.

Decision of Walton, J. ([1910] W. N. 147; 102 L. T. 915; 26 T. L. R. 501; 54 Sol. Jo. 565) affirmed.

SAQUI AND LAWRENCE v. STEARNS, [1911] 1 [K. B. 426; 80 L. J. K. B. 451; 103 L. T. 583; 27 T. L. R. 105; 55 Sol. Jo. 91; 16 Com. Cas. 32—C. A.]

4. *Fidelity—Assistant Overseer—Clerk to Parish Council—Defalcations in Accounts as Clerk not Covered by Policy Given to Guardians in Respect of Defaulter’s Appointment as Assistant Overseer.*—A. was appointed assistant overseer of the parish of H., and by virtue of his appointment under sect. 17, sub-sect. 2, of the Local Government Act, 1894, he became clerk to the parish council of H. The defendants entered into a bond guaranteeing the faithful performance of his duties as assistant overseer. A. committed defalcations in respect of moneys received by him as clerk to the parish council.

HELD—that the defalcations of H. in relation to the parish council accounts were not covered by the terms of the bond guaranteeing the faithful performance of his duties in the office of assistant overseer.

COSFORD UNION AND HITCHAM PARISH [COUNCIL v. POOR LAW AND LOCAL GOVERNMENT OFFICERS’ MUTUAL GUARANTEE ASSOCIATION, LD., 103 L. T. 463; 75 J. P. 30; 8 L. G. R. 995—Div. Ct.]

5. *Fidelity—Two Policies Covering Loss by Defalcations of Employes—Policies not Coterminal—Loss—Contribution Between Insurers.*—

The plaintiffs, an American insurance company, issued a policy by which they covenanted to pay an American bank for any loss or damage caused by dishonesty of any employé, the liability for any individual employé not to be greater than the amount set against his name in a schedule. Among the persons named in the schedule was K., who was guaranteed up to \$2,500. The bank also took out a policy at Lloyd’s for £40,000, and by this policy the underwriters were to be liable for loss sustained by the loss or destruction on the assured’s premises of bonds, bank notes, and other documents, owing to fire or burglary, and also for loss through the dishonesty of clerks or other employés. During the currency of the two policies K. made defalcations to the extent of \$2,680. The bank claimed from the plaintiffs the full amount of the insurance, \$2,500, leaving a balance not covered by that policy of \$180. The bank then claimed and were paid the \$180 on the Lloyd’s policy. In an action by the plaintiffs against the defendant, one of the underwriters on the Lloyd’s policy, who admitted that some contribution was due:—

HELD—(1) that, as contribution between co-insurers depended upon equity and not upon contract, the law of the country to which the party required to do equity was subject governed the matter, and therefore that English law, and

III. General—Continued.

not American law, applied; and (2) that the defendant was liable on the basis that the underwriters should bear a proportion of the whole loss of \$2,680 in the ratio of 2,680 to 2,500.

Quere, whether, but for the defendant's admission, any contribution was due.

AMERICAN SURETY COMPANY OF NEW YORK
[*v. WRIGHTSON*, 103 L. T. 663; 27 T. L. R. 91; 16 Com. Cas. 37—Hamilton, J.]

6. Reinsurance—Alteration of Risk—Liquidation of Company which is the Original Insurer—Liability of Reinsurer.—When a reinsurer is bound by a contract of reinsurance, so that his liability commences simultaneously with that of the insurer, and follows it in every case, and all settlements of claims made by the insurer, whether by payment or otherwise, are to be unconditionally binding on the reinsurer, then the risk undertaken by the reinsurer is that which is undertaken by the original insurer, and the liquidation of the company which is the original insurer is not an alteration of the risk undertaken, and does not absolve the reinsurer from liability under the contract of reinsurance.

LAW GUARANTEE TRUST AND ACCIDENT
[*SOCIETY, LD. v. MUNICH REINSURANCE Co.*, [1911] W. N. 225; 56 Sol. Jo. 108—Warrington, J.]

IV. LIFE.

See also INFANTS, No. 2; SETTLEMENTS, No. 9.

(a) Avoidance of Policy and Recovery of Premium: Insurable Interest.

7. No Insurable Interest—Innocent Misrepresentation by Insurance Agent—Recovery of Premiums.—Premiums paid under a policy of life insurance which is void by reason of the fact that the person paying the premiums had no insurable interest in the life of the person insured cannot be recovered on the ground that the insurer was induced to take out the policy on the faith of an innocent misrepresentation by the agent of the insurance company as to the validity of the policy.

British Workman's and General Insurance Co. v. Cunliffe ((1902) 18 T. L. R. 425, 502) and *Harse v. Pearl Life Insurance Co.* ([1904] 1 K. B. 558) discussed and reconciled.

PHILLIPS *v.* ROYAL LONDON MUTUAL INSURANCE
[*Co.*, LD., 105 L. T. 136—Div. Ct.]

8. Condition in Policy—Breach—Forfeiture of Premium—Avoidance of Policy—Action to Recover Premiums Paid after Breach of Condition.—A condition indorsed on a policy of life insurance effected in 1894 provided that if the assured should go beyond certain geographical limits without obtaining the insurance company's licence "the assurance shall be void, and the premiums paid shall be forfeited." In ignorance or forgetfulness of this condition, the assured in 1897 travelled to India, which was outside the specified geographical limits, without obtaining the company's licence. He continued to pay

the premiums till 1911, when he informed the company of his visit to India in 1897. The company thereupon replied that, strictly speaking, the policy was void, but that they were prepared to waive the breach of the condition on payment of the extra premium that would have been charged if he had informed them at the time of his visit to India. The assured then sued the company claiming the return of all the premiums paid since 1897 on the footing that the policy was void.

HELD—that, even on the assumption that the policy became void on breach by the assured of the condition indorsed on the policy, no action lay for the return of the premiums as money paid without consideration.

SPARENBORG *v.* EDINBURGH LIFE ASSURANCE
[*Co.*, 28 T. L. R. 51—Bray, J.]

9. Want of Insurable Interest—Friendly Society—Innocent Misrepresentation by Agent as to Validity of Policy—Recovery Back of Premiums—Life Assurance Act, 1774 (14 Geo. 3, c. 48).—A policy of insurance was effected with a friendly society by a person on a life in which she had no insurable interest. In an action claiming the return of the premiums as money had and received to the plaintiff's use upon the consideration that they were premiums of insurance, and that there was no insurance:—

HELD—that the plaintiff, being prevented by statute from recovering for want of insurable interest, was not entitled to recover on the consequent and not independent ground of total failure of consideration.

EVANSON *v.* CROOKS, 28 T. L. R. 123—Hamilton, J.]

10. Insuring Life of Infant Taken in to Nurse—Statutory Offence—Paying Premiums due on Policy Effected Prior to Commencement of Act—Children Act, 1908 (8 Edw. 7, c. 67), s. 7.—Sect. 7 of the Children Act, 1908, provides that a person who undertakes the nursing and maintenance of an infant under seven years of age for reward "shall be deemed to have no interest in the life of the child, . . . and if any such person directly or indirectly insures or attempts to insure the life of such infant he shall be guilty of an offence. . . ."

HELD—that it was not a contravention of the statute for a person, who had undertaken the care of an infant and insured its life prior to the commencement of the Act, to continue to pay the premiums due under the policy after the Act came into force.

GLASGOW PARISH COUNCIL *v.* MARTIN, [1910]
[S. C. (J.) 102; 47 Sc. L. R. 773; 6 Adam, 276—Ct. of Justy.]

(b) "Carrying on Business."

[No paragraphs in this vol. of the Digest.]

(c) Construction of Policy.

See No. 11, *infra*.

(d) Jurisdiction of Justices.

[No paragraphs in this vol. of the Digest.]

IV. Life—Continued.

(e) Practice.

[No paragraphs in this vol. of the Digest.]

(f) Transfer, Mortgage, and Alteration of Rights.

11. Insurance for Benefit of Wife and Children—Tontine Dividends—Assignment by Husband for Benefit of Creditors—Rights to Benefits under Policy—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11.—By a policy effected by a husband on his own life, the insurance company contracted to pay to E. M., the wife of the insured, for her sole use, "if then living," and, if not living, to the children of the insured or their trustees for their use, or if there should be no such children surviving then to the executors, administrators, or assigns of the assured, the sum of £1,000. On the back of the policy were various conditions, from which it appeared that the policy was issued on the semi-tontine plan; and that in June, 1910, when the tontine dividend period would expire, the insured in question, if the policy was then in force, would have the options, *inter alia*, (1) of withdrawing in cash the policy's entire share of the assets, (2) of converting the same into a paid-up policy for an equivalent amount. The insured's wife died before the completion of the dividend period, leaving one daughter. In 1905 the insured assigned his property to a trustee for the benefit of his creditors, and the terms of the assignment were wide enough to include the policy if capable of assignment. On the expiration of the dividend period the insured was still alive, and the trustee for his creditors claimed the right to exercise the first option and of receiving the entire assets for the creditors.

HELD—that the options under the policy could only be exercised for the benefit of the persons for whom the trust was created; that so long as any objects of the trust remained unperformed the trusts could not be defeated; that the options must be exercised in the best manner for the benefit of those entitled, and that the proper course was for the insurance company to issue a paid-up policy within the meaning of option 2 for the benefit of the child or children surviving the insured, and if there should be none the benefit of it would fall into his estate.

IN RE A POLICY OF THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES AND MITCHELL, 27 T. L. R. 213—Eady, J.

12. Transfer of Assurance Business—Subsidiary Company—Principal Company—Guarantee of Policies—Mutual Reinsurance—Winding Up—Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 16.—The L. Company was incorporated in 1903 with a capital of £5,000 divided into 10,000 shares of 10s. each; 3,650 shares had been issued, on each of which 6s. 3d. was paid. A provisional agreement for the sale of the L. Company's undertaking to the N. Company was made on June 9th, 1909, but not carried out owing to the opposition of certain shareholders. The N. Company purchased 2,843 shares in the L. Company, and 300 shares to qualify their nominees as directors of the L. Company, whose existing directors retired.

The N. Company guaranteed the policies of the L. Company, and the two companies entered into a treaty of mutual reinsurance. On July 17th, 1911, a petition to wind up the N. Company was presented and a compulsory order made. On September 18th, 1911, the N. Company presented a petition for the winding up of the L. Company in conjunction with the N. Company, alleging that the L. Company was a subsidiary company and the N. Company a principal company within sect. 16 of the Assurance Companies Act, 1909.

HELD—that neither a treaty of mutual reinsurance nor a guarantee of policies is a transfer of assurance business, and that the N. Company had not made out a case under sect. 16 of the Assurance Companies Act, 1909.

IN RE LANCASHIRE PLATE GLASS, FIRE AND BURGLARY INSURANCE CO., LD., [1912] 1 Ch. 35; [1911] W. N. 199; 105 L. T. 570; 56 Sol. Jo. 13—Eady, J.

13. Transfer of Business of Insurance Company—Petition by Company to Sanction Transfer—Competency—Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 13.—An insurance company which had power under its memorandum and articles of association to sell or dispose of its business or any part thereof in consideration of payment in cash or in shares or securities of any other company, or for such other consideration as the directors might deem proper, presented a petition for sanction of a proposal to transfer its life assurance business (which had not been a profitable one) to another company. Under the proposed arrangement the policies issued by the petitioners were to be cancelled, the policy holders receiving in lieu thereof policies of the same value in the new company. Though non-participating policies were to be issued for participating policies, the transaction was an advantageous one for the policy holders, who had a better chance of obtaining profits under the new policies than under the old, and who could, if they desired it, obtain participating policies in the new company on payment of a higher premium. All the policy holders were in favour of the proposed transfer.

HELD—(1) that the fact that the petition was presented by the company and not by the directors (as provided for in sect. 13 of the Assurance Companies Act, 1909) did not render the petition incompetent, and (2) (Lord Johnston dissenting) that the Court had power under the Act to sanction the proposed arrangement.

In re Sovereign Life Assurance Co. ((1889) 42 Ch. D. 540) distinguished.

EMPIRE GUARANTEE AND INSURANCE CORPORATION, LD., PETITIONERS, [1911] S. C. 1296; 48 S. C. L. R. 1038—Ct. of Sess.

(g) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

V. MARINE.

See also REVENUE, No. 15.

(a) Brokers' Rights and Liabilities.

14. Lien on Policy for Unpaid Premiums—Lien on Proceeds of Policy—Estoppel.—The plain-

V. Marine—Continued.

tiffs chartered the *V.* to R. S. & Co. under a time charter which provided that the charterers were to insure the hull, etc., in the owners' name for £40,000 all risks and £20,000 total loss only. R. S. & Co. instructed the defendants, who were insurance brokers, to effect those policies and also policies on disbursements and freight of the *V.* The defendants, at the request of R. S. & Co., wrote to the plaintiffs informing them of the insurances for £40,000 and £20,000, and added, "We have received instructions from R. S. & Co. to hold the above policies to your order, which we hereby undertake to do, subject to our lien on same for unpaid premiums, if any."

Held—that the defendants were estopped from setting up against the plaintiffs a general lien for premiums due from R. S. & Co. in respect of policies on the *V.* other than those for £40,000 and £20,000.

Quere—whether a lien on documents gives a lien on proceeds collected under them.

FAIRFIELD SHIPBUILDING AND ENGINEERING Co., LD., v. GARDNER, MOUNTAIN & Co., LD., 27 T. L. R. 281—Scrutton, J.

(b) Collision.

[No paragraphs in this vol. of the Digest.]

(c) Concealment.

15. Non-disclosure to Insurer of Material Facts—Honour Policies—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), ss. 17, 18, 19, 33, 39.—Shipowners brought an action to recover for a total loss under policies of insurance on the hull of the ship during a specified voyage. The insurances were effected through the agency of the managing owner of the vessel. It appeared that twenty-two years had elapsed since the master of the vessel had been at sea, he having during that time been engaged as a stevedore; that he had lost his last ship and his certificate had been suspended; that the hull was largely over-insured, having regard to its market value, and that there were insurances on gross freight and disbursements. With regard to part of these disbursements there was no insurable interest and the insurance was effected by a p.p.i. or "honour policy." The managing owner, to whom money was due from the ship, had also taken out for his own protection "honour policies" to a large amount on disbursements.

Held, first (Lord Shaw of Dunfermline doubting)—that there was no duty on the part of the owners to inform the insurers of the past history of the master, and that the omission to disclose the circumstances relating to his career did not constitute the non-disclosure of a material circumstance; but secondly, that the omission to disclose the facts relating to the over-insurance of the vessel and the existence and amount of the honour policies did amount to the non-disclosure of material circumstances, and that the contract of insurance was voidable by the insurers under sects. 18 and 19 of the Marine Insurance Act, 1906.

Decision of Ct. of Sess. ([1910] S. C. 1072; 47 Sc. L. R. 860) reversed on the second ground.

THAMES AND MERSEY MARINE INSURANCE Co. [v. "GUNFORD" SHIP Co., SOUTHERN MARINE MUTUAL INSURANCE ASSOCIATION, LD. v. "GUNFORD" SHIP Co., [1911] A. C. 529; 80 L. J. P. C. 146; 105 L. T. 312; 27 T. L. R. 518; 55 Sol. Jo. 631; 16 Com. Cas. 270; 48 Sc. L. R. 796—H. L. (Sc.)

16. Relation of Broker and Underwriter—Disclosure of Material Facts.—Under ordinary circumstances a broker effecting a contract of insurance with an underwriter owes no duty to the latter in respect of erroneous but honest statements made by him.

The material facts which have to be disclosed to an underwriter are as to the subject-matter of the insurance—the ship and the perils to which she is exposed. Knowing these facts, the underwriter must form his own judgment of the premium, and other people's judgment is quite immaterial. If the underwriter wants to know who the assured is he must ask the question; there is otherwise no duty to disclose the name.

GLASGOW ASSURANCE CORPORATION, LD. v. [W. SYMONDSON & Co., 104 L. T. 254; 27 T. L. R. 245; 16 Com. Cas. 109—Scrutton, J.]

(d) Construction.

17. "Inchmaree" Clause—Defective Stern Frame—Damage to Hull or Machinery—Latent Defect.—By a policy of marine insurance a ship was insured for twelve months from December 8th, 1908, to December 8th, 1909, against the ordinary Lloyd's perils. The policy also contained the following clause:—"This insurance also specially to cover . . . loss of or damage to hull . . . through any latent defect in the . . . hull . . . provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the manager." There was a defect in the ship's stern frame at the time she was built—viz., in 1906. The defect was covered up by the makers, and it remained undiscoverable by reasonable inspection until after the commencement of the policy. During the currency of the policy the defect became visible owing to ordinary wear and tear, and the stern frame was condemned. The assured claimed to recover under the policy the cost of replacing the condemned stern frame.

Held—that there had been no loss or damage to hull during the currency of the policy from perils insured against, and therefore that the assured were not entitled to recover.

Decision of Scrutton, J. (104 T. L. 208; 27 T. L. R. 217; 16 Com. Cas. 132) affirmed.

HUTCHINS BROTHERS v. ROYAL EXCHANGE ASSURANCE, [1911] 2 K. B. 398; 80 L. J. K. B. 1169; 105 L. T. 6; 27 T. L. R. 482; 16 Com. Cas. 242—C. A.]

V. Marine—Continued.

18. *Cif. Contract—Insurance Against "All Risks"—Meaning of.*—By a contract in writing the defendants sold certain goods to the plaintiffs, and as the plaintiffs stipulated for "complete insurance against all risks," the defendants inserted in the margin of the contract the following words: "Insurance to be effected by us all risks." The defendants took out a policy covering the goods from Piræus to Antwerp for "£850 on 102 casks citrons (in brine). So valued. To pay average as customary." The policy contained an f.p.a. clause and the usual memorandum. There were clauses attached to the policy including one which covered "all risks by land or water (if by sea) at current additional premium" and a "held covered clause," which provided (*inter alia*) that in the case of circumstances which might cause a variation and (or) entire alteration in the risk as contemplated in the policy, a payment in respect thereof should be made by the assured. The citrons, on their arrival at Antwerp, were found to be considerably damaged owing to their having been stowed on deck instead of under deck. In an action by the plaintiffs against the defendants for failing to insure the goods against all risks:—

HELD, on the true construction of the contract—that the defendants were only bound to cover all risks in the sense of the entire *quantum* of damage, and not to procure a policy covering the plaintiffs against all causes of accident.

VINCENTELLI & CO. v. JOHN ROWLETT & CO.,
[105 L. T. 411; 16 Com. Cas. 310—
Hamilton, J.]

(e) Damages and Contribution.

[No paragraphs in this vol. of the Digest.]

(f) Freight and Cargo.

See No. 21, *infra*.

(g) General Average.

[No paragraphs in this vol. of the Digest.]

(h) Insurable Interest.

[No paragraphs in this vol. of the Digest.]

(i) Mortgages and Assignments.

[No paragraphs in this vol. of the Digest.]

(j) Practice.

[No paragraphs in this vol. of the Digest.]

(k) Risk: Nature, Duration, Change, etc.

19. Policy covering Voyage "to Port or Ports, Place or Places of Call and/or Discharge"—One Port of Discharge named in Charterparty—Total Loss while Vessel Proceeding to Second Port with Part of Original Cargo—Right of Assured to Recover.—By a policy of insurance the plaintiffs insured their ship for a voyage from Newcastle (N.S.W.) "to port or ports, place or places of call and/or discharge backwards and forwards and forwards and backwards in any order or rotation on the West Coast of South America, and while

in port for thirty days after arrival, however employed, or until sailing on next voyage, whichever may first occur." The vessel was chartered to load a cargo of coal at Newcastle (N.S.W.), and under the charterparty the charterers directed her to discharge the cargo at Valparaiso, and bills of lading were issued making it deliverable at that port. She was then, under a second charterparty, to proceed to Tocopilla to load a nitrate cargo for a European port. When the vessel reached Valparaiso it was agreed between the plaintiffs and the charterers under the first charterparty that, instead of delivering the whole of the cargo of coal at Valparaiso, she should proceed with 800 or 900 tons of the coal still on board and deliver same to the charterers at Tocopilla. On the voyage to the latter port the vessel stranded and became a total loss.

HELD—that it was competent for the plaintiffs and charterers to vary the mode of performing the charterparty by discharging the cargo of coal at two ports instead of one, and that the loss was covered by the policy.

S.S. KYNANCE CO., LD. v. YOUNG, 104 L. T.
[397; 27 T. L. R. 306; 16 Com. Cas. 123—
Scrutton, J.]

20. Reinsurance—Commencement of Risk—Intention of Assured—Right of Assured to Recover.—A ship was insured by two policies issued by the plaintiffs for a voyage from "Newcastle, N.S.W., to port or ports place or places in any order or rotation on the West Coast of South America." The ship was valued at £12,000, and the risk was to continue until thirty days after arrival at final port of discharge or until sailing on next voyage, whichever might first happen. The ship was also insured by a third policy issued by the plaintiffs for a voyage "at and from Valparaiso and/or port or ports and/or place or places in any order or rotation on the West Coast of South America" to the United Kingdom or Continent or the United States. In this policy the ship was valued at £10,000, and the risk was to commence from the expiration of the previous policy. The plaintiffs reinsured the ship with the defendant for a voyage "at and from Valparaiso and/or any port or ports place or places on the West Coast of South America," to the United Kingdom, Continent of Europe, or the United States. The ship was valued as in the original policy. The instructions given by the plaintiffs to their brokers to effect this reinsurance were for a voyage "at and from Valparaiso and/or W.C.S.A. or h/c to U.K. and/or Cont., or to U.S. or h/c. . . . warranted nitrate or h/c. Valuation clause. Hull, &c., vd. £10,000, or v.o.p." The vessel was lost as narrated in *S.S. Kynance Co., Ltd. v. Young (supra)*. The plaintiffs, having paid the owners of the ship for a loss under the first two policies, brought this action on the policy of reinsurance.

HELD—that the defendant was liable under the policy of reinsurance as he had not proved that the intention of the plaintiffs was to reinsure only their liability under the third policy.

RELiance MARINE INSURANCE CO. v. DUDER,
[28 T. L. R. 86—Bray, J.]

V. Marine *Continued.*(l) **Seaworthiness.**

[No paragraphs in this vol. of the Digest.]

(m) **Subrogation.**

[No paragraphs in this vol. of the Digest.]

(n) **Time Policies and Valued Policies.***See* No. 17, *supra*.(o) **Total Loss and Constructive Total Loss.**

21. *Insurance of Cargo against Total Loss by Total Loss of Vessel—Constructive Total Loss of Vessel—Civil Code of Lower Canada, s. 2522.*—A cargo of cement shipped by barge was insured against total loss "by total loss of the vessel." During the voyage the barge struck against a snag, in consequence of which a hole was knocked in her bow. She settled down and about 70 ft. of her deck was completely submerged. The cement was completely destroyed as cement.

HELD—that there had been, within the meaning of the policy, a total loss of the cargo insured, notwithstanding that the barge might be afterwards floated and repaired.

Decision of Supreme Court of Canada (41 S. C. R. 639) reversed.

MONTREAL LIGHT, HEAT, AND POWER CO. v.

[SEDGWICK AND OTHERS, [1910] A. C. 598 ;

80 L. J. P. C. 11 ; 103 L. T. 234 ; 26 T. L. R.

657 ; 11 Asp. M. C. 437—P. C.

(p) **Warranty.**

22. *Frozen Meat Cargo — "Warranted Free from Particular Average and Loss unless caused by Stranding, Sinking, Burning, or Collision of the Ship or Craft" — Cargo Condemned by Sanitary Authorities—Total Loss.*—In an action to recover for a total loss under a policy of insurance of a cargo of frozen meat, evidence was given on behalf of the underwriter by a number of other underwriters to the effect that a clause in the policy, "Warranted free from particular average and loss, unless caused by stranding, sinking, burning, or collision of ship or craft," etc., had a well recognised meaning—viz., that the policy was warranted free not only from particular average unless it was caused by stranding, sinking, burning, or collision of ship or craft, but was also free from loss of the subject-matter, total or partial, unless caused in the same way.

HELD, upon the evidence—that the words had acquired that recognised meaning, and that as the loss in question had not occurred by stranding, sinking, burning, or collision of the ship or craft, the defendant was not liable on the policy.

OTAGO FARMERS' CO-OPERATIVE ASSOCIATION

[OF NEW ZEALAND, LD. v. THOMPSON, [1910]

2 K. B. 145 ; 79 L. J. K. B. 692 ; 102 L. T.

711 ; 15 Com. Cas. 28 ; 11 Asp. M. C. 403—

Hamilton, J.

(q) **Miscellaneous.**

23. *Increased Value Policies in Addition to Ordinary Policies — Sale of Cargo on c.i.f.*

Terms — Right of Seller to Recover in Respect of Increased Value Policies.—A contract for the sale of a cargo of wheat upon c.i.f. terms contained the following clause: "Seller to give policy of insurance for 2 per cent. over the invoice amount, and any amount in excess to that for seller's account in case of total loss only." There were several dealings with the cargo, which was ultimately purchased by the defendants. The plaintiffs, who were originally interested in the cargo, had, in addition to the ordinary policies of insurance, taken out two "increased value" policies which they had not passed on to the buyers. A loss having occurred, the plaintiffs sent the defendants the two policies in question, and asked them to hand them to the receiver of the cargo, to be handed by him to the adjusters for the purpose of making up the general average statement, and "thus establish the amount due to us." The underwriters in due course paid the amounts due under these two policies, which the defendants retained. In an action by the plaintiffs for money had and received to the plaintiffs' use:—

HELD—that the plaintiffs were entitled to succeed as the benefit of the increased value policies did not pass under the contract of sale.

Ralli v. Universal Marine Insurance Co., Ltd.

((1862) 6 L. T. 34) and *Landauer v. Asser*

([1905] 2 K. B. 184) discussed.

STRASS v. SPILLERS AND BAKERS, LD., [1911]

[2 K. B. 759 ; 80 L. J. K. B. 1218 ; 104

L. T. 284 ; 16 Com. Cas. 166—Hamilton, J.

INTEREST.

See BANKRUPTCY ; DAMAGES, No. 7 ; MONEY AND MONEY-LENDERS ; PRACTICE.

INTERNATIONAL LAW.

See ALIENS ; CONFLICT OF LAWS.

INTERPLEADER.

See also BANKRUPTCY, No. 16.

1. *Interpleader Issue Directed to be Tried before a Master — Order of Master—Appeal—R. S. C., Ord. 57, rr. 11, 13.*—Where an interpleader issue is directed to be tried before a Master and on the trial of the issue the Master arrives at certain findings, and makes an order, an appeal lies from his decision to the Divisional Court.

Blair v. Clark ([1908] 2 K. B. 548) followed.

Cox v. Bowen, [1911] 2 K. B. 611 ; 80 L. J.

[K. B. 1149 ; 105 L. T. 141 ; 55 Sol. Jo.

581—Div. Ct.

INTERPRETATION OF DOCUMENTS.

See DEEDS AND DOCUMENTS.

INTERPRETATION OF STATUTES.

See STATUTES.

INTERPRETATION OF WILLS.

See WILLS.

INTERROGATORIES.

See DISCOVERY.

INTESTACY.

See DESCENT AND DISTRIBUTION.

INTOXICATING LIQUORS.

	COL.
I. APPLICATIONS FOR NEW LICENCES	301
[No paragraphs in this vol. of the Digest.]	
II. RENEWAL OF LICENCES.	
(a) Jurisdiction and Procedure	302
(b) Compensation on Refusal	302
(c) Generally	305
III. TRANSFERS AND REMOVALS	305
IV. OFFENCES	306
(a) Drunkenness on Licensed Premises	306
(b) Sale by Unlicensed Person	306
(c) Sale at Unlicensed Place	307
(d) Selling or Keeping Open during Prohibited Hours	308
[No paragraphs in this vol. of the Digest.]	
(e) Miscellaneous Offences	308
V. SALE TO CHILDREN	309
VI. HABITUAL DRUNKARDS	309
[No paragraphs in this vol. of the Digest.]	
VII. MISCELLANEOUS	309
[No paragraphs in this vol. of the Digest.]	
See also RATES, Nos. 2, 4, 11, 12, 13; REVENUE, No. 10.	

I. APPLICATIONS FOR NEW LICENCES.
[No paragraphs in this vol. of the Digest.]

II. RENEWAL OF LICENCES.

(a) Jurisdiction and Procedure.

See also CRIMINAL LAW, No. 75.

1. *Refusal to Renew—Forfeiture of Licence—Two Convictions at Same Time—"Second Offence"*—*Licensing Act, 1872* (35 & 36 Vict. c. 94), s. 3—*Licensing (Consolidation) Act, 1910* (10 Edw. 7, c. 24), s. 65 (3).—In November, 1910, the appellant, a holder of an off-licence, was summoned under sect. 3 of the Licensing Act, 1872, for two offences, namely, for having sold beer at unauthorised places, and for exposing beer for sale at the same time and places. He was served with two separate informations, but the summonses were heard together, and the appellant was convicted and fined on both charges. On February 8th, 1911, the appellant applied for a renewal of his licence at the general licensing sessions. The police pointed out to the justices that the appellant had previously been convicted twice of an offence under the above section. Thereupon the justices refused the renewal, on the ground that the licence had been forfeited by operation of law, so that there was no licence in existence which could be renewed.

HELD—that the proper construction of subsect. 3 of sect. 65 of the Licensing (Consolidation) Act, 1910 (corresponding to the repealed sect. 3 of the Licensing Act, 1872), was that a second offence meant an offence committed after a previous conviction; and that, as there was nothing to show the justices which of the convictions relied on was a second offence, the rule directing the justices to hear the application for renewal must be made absolute.

R. v. SOUTH SHIELDS LICENSING JUSTICES, EX [PARTE MORRISON, [1911] 2 K. B. 1; 80 L. J. K. B. 809; 105 L. T. 41; 75 J. P. 299; 27 T. L. R. 330; 55 Sol. Jo. 386—Div. Ct.

(b) Compensation on Refusal.

2. *Compensation Levy—Tied Houses—Income Tax Deduction—Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 100, *Sched. D—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 3.—The compensation levy imposed by sect. 3 of the Licensing Act, 1904, upon a brewery company who are landlords of tied houses is an expense incurred for the purposes of their trade, which may be deducted from the profits of their trade in arriving at the assessable amount of such profits for the purposes of the Income Tax Acts.

So HELD by Lord Halsbury and Lord Atkinson (Lord Loreburn, L.C., and Lord Shaw dissenting).

There being an equal division of opinion, the appeal was dismissed without costs.

Decision of C. A. ([1909] 2 K. B. 912; 78 L. J. K. B. 1089; 101 L. T. 145; 73 J. P. 447; 25 T. L. R. 748; 53 Sol. Jo. 696; 16 Manson, 326) affirmed.

SMITH v. LION BREWERY CO., LD., [1911] [A. C. 150; 80 L. J. K. B. 566; 104 L. T. 321; 75 J. P. 273; 27 T. L. R. 261; 55 Sol. Jo. 269; 48 Sc. L. R. 1083—H. L.]

11. Renewal of Licences—Continued.

3. *Compensation Charge—Deduction from Rent—“Unexpired Term”—Extension of Lease—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 3. *Sched. II.—Licensing (Consolidation) Act, 1910* (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21 (3), *Sched. III.*—The rule, laid down in *Llangattock (Lord) v. Watney, Combe, Reid & Co.* ([1910] A. C. 394), that, for the purpose of computing the amount of the charge deductible from rent under sect. 3 and Sched. II. of the Licensing Act, 1904 [Licensing (Consolidation) Act, 1910, s. 21, Sched. III.], the “unexpired term” is the unexpired period of the existing lease and does not include the period of a reversionary lease acquired by the tenant, applies equally where an extension has been granted of an existing lease without any interval between them; and it makes no difference that the extension is granted subject to forfeiture in the event of forfeiture of the lease.

KNIGHT v. CITY OF LONDON BREWERY Co.,
[1912] 1 K. B. 10; [1911] W. N. 202
—Lawrence, J.

4. *Compensation Charge—Deductions from Rent—Tenant for Life and Remainderman—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 3—*Licensing (Consolidation) Act, 1910* (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21.]—Deductions from the rent of licensed premises in respect of the compensation charge under sect. 3 of the Licensing Act, 1904 [Licensing (Consolidation) Act, 1910, s. 21], are a burden imposed upon the person entitled to the rent, and therefore a tenant for life is not entitled to be repaid the amount of such deductions out of compensation paid on a refusal of renewal of the licence.

IN RE FOX, FOX v. MOORE, 130 L. T. Jo. 484—
[Neville, J.]

5. *Award by Inland Revenue Commissioners—Successful Appeal from Award—Power to Order Commissioners to Pay Costs—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 10 (3)—*Licensing Act, 1904* (4 Edw. 7, c. 23), s. 2.]—Where the parties interested in licensed premises successfully appealed to the High Court against the amount awarded by the Commissioners of Inland Revenue as compensation under the Licensing Act, 1904, for the non-renewal of the licence, *Bray, J.*, being of opinion that in the circumstances of the case the Commissioners had acted unreasonably and that their conduct had led to the appeal, ordered the Commissioners to pay the appellants' costs.

HELD—that there were reasonable grounds on which *Bray, J.*, could so find, and that the Court of Appeal could not interfere with the exercise of his discretion.

Decision of *Bray, J.* (103 L. T. 308; 74 J. P. 395; 26 T. L. R. 605) affirmed.

Semble (*per Bray, J.*), the duty of the Commissioners is to make reasonable inquiries as to the amount of compensation money payable, and not to fix the amount without giving the parties interested full opportunity of meeting any

objection and of doing what can be done to avoid an appeal.

IN RE HARDY'S CROWN BREWERY, LD., AND ST. PHILIP'S TAVERN, MANCHESTER, 103 L. T. 520; 75 J. P. 1; 27 T. L. R. 25; 55 Sol. Jo. 11—C. A.

6. *Apportionment of Compensation—Person Interested in Licensed Premises—Registered Owner—Lord of the Manor—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 2—*Licensing Rules, 1904*, rr. 27, 37.]—The freehold in all the copyhold lands in a manor was vested in the appellants, who were entitled to all the usual manorial rights, including a fine on the admittance of a tenant. A beer-house was situate on copyhold land within the manor of which the respondents were copyhold tenants holding the same by copy of court roll. The appellants were registered as owners of the beer-house. The renewal of the licence of the beer-house having been refused subject to compensation:—

HELD—that the appellants were persons interested in the licensed premises as owners, and were, therefore, entitled to share in the compensation money.

ECCLESIASTICAL COMMISSIONERS FOR ENGLAND v. PAGE, [1911] 2 K. B. 946; 80 L. J. K. B. 1346; 75 J. P. 548—Div. Ct.

7. *Compensation Money—Tenant for Life—Remaindermen—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 2.]—The tenant for life under the will of the testator was, as such, in receipt of the rent of a freehold public-house. In 1907 the licence of this house was extinguished, and the tenant for life received £450 as compensation under the Licensing Act, 1904.

HELD—that this compensation money did not belong to the tenant for life for her own benefit, but was received by her as trustee for herself and the persons interested in remainder.

Decision of *Neville, J.* ([1911] 2 Ch. 350; 105 L. T. 367) affirmed.

IN RE BLADON, DANDO v. PORTER, [1912] 1 Ch. 45; [1911] W. N. 223; 28 T. L. R. 57—C. A.

8. *Devise of Licensed Premises—Separate Bequest of Business—Lease Granted after Testator's Death Unexpired—Claim of Legatee of Business to Participate in Compensation—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 2.]—Where a lease of licensed premises, the premises having been devised separately from the business of beer retailer, has been granted by the tenant for life and is subsisting when the compensation on refusal to renew the licence is granted, a legatee of the business has no interest in the premises or reversionary goodwill of the business carried on upon them entitling him to participate in the compensation fund apportioned to the owner of the premises.

IN RE SPURGE, CULVER v. COLLETT, 104 L. T. 669; 75 J. P. 410; 55 Sol. Jo. 499—Evc. J.

II. Renewal of Licences—Continued.

9. *Practice—Committee of Quarter Sessions Acting as Compensation Authority—Supplemental Meeting—Power to State a Case.*—The committee of quarter sessions appointed under the Licensing Act, 1904, when holding a supplemental meeting for the purpose of settling the shares in which the compensation money is to be divided among the persons entitled to compensation, has power to state a case for the opinion of the King's Bench Division.

ECCLESIASTICAL COMMISSIONERS FOR ENGLAND *v.* PAGE, [1911] 2 K. B. 946; 80 L. J. K. B. 1346; 75 J. P. 548—Div. Ct.

(c) Generally.

10. *Alteration of Premises—Premises Ill-conducted—Structurally Unsuited—Refusal of Renewal—Licensing Act, 1902* (2 Edw. 7, c. 28), s. 11 (2)—*Licensing Act, 1904* (4 Edw. 7, c. 23), s. 1 (1).—Certain licensed premises consisted of a hotel and a restaurant about 150 yards distant, both buildings being in one curtilage, the whole of which was included in the licensed area. For the purpose of erecting a skating rink on a portion of the ground, which had not been used for the sale of intoxicating liquors, an application was made to the licensing justices to exclude it from the licensed area, but this application was refused. Notwithstanding this refusal a skating rink was erected on this portion of the ground, but no intoxicating liquor was sold there. Four exits from the skating rink into portions of the licensed area and a main entrance to the skating rink from a public street were also made without the knowledge and consent of the licensing justices, but there was no evidence that these exits had been used. On a subsequent application to the licensing justices for two separate licences, one for the hotel and another for the restaurant, the application was refused, and this refusal was affirmed by quarter sessions on the grounds that for the above reasons the character of the original licence had been destroyed and the premises had been ill-conducted within the meaning of sect. 1 (1) of the Licensing Act, 1904, and that by reason of the alterations the premises were structurally unsuitable.

HELD—that it was a question of fact whether the alterations gave increased facilities for drinking or affected the communication between the part of the premises where intoxicating liquor was sold and any other part of the premises, within the meaning of sect. 11 (2) of the Licensing Act, 1902, and that the above facts constituted evidence upon which quarter sessions could find that the premises had been ill-conducted and were structurally unsuitable, and that therefore the decision of quarter sessions must be affirmed.

MARSHALL *v.* SPICER, 103 L. T. 902; 75 J. P. 138—Div. Ct.

III. TRANSFERS AND REMOVALS.

11. *Transfer—Old Beerhouse Licence—Tied House—Agreement between Transferee and*

Brewery Company—Fit and Proper Person—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 24, s. 23, *Sched. II., pt. 2.*—On an application for the transfer of an old beerhouse licence licensing justices are not entitled, under their jurisdiction to inquire whether the proposed transferee is a fit and proper person to hold the licence, to take into consideration the terms of an agreement made between the proposed transferee and a brewery company, the owners of the beerhouse, with regard to the supply and sale of beer.

R. *v.* COOKE, EX PARTE ALBERTON, 132 L. T. [Jo. 180—Div. Ct.]

IV. OFFENCES.

See also No. 1, *supra*: LOCAL GOVERNMENT, No. 5.

(a) Drunkenness on Licensed Premises.

12. *Permitting Drunkenness—Ous of Proof—Licensing Act, 1872* (35 & 36 Vict. c. 94), ss. 13, 18—*Licensing Act, 1902* (2 Edw. 7, c. 28), s. 4.—Two men were on the premises of the respondent, a licensed beerhouse keeper, and one produced from his pocket a bottle of whisky which he handed to the other, who drank out of the bottle without the knowledge of the respondent and became helplessly drunk. The respondent caused him to be laid on a sofa and provided him with tea in order to bring him to his senses. Finally, when he was still in a dazed condition, he was conducted home by the respondent's daughter. On a summons against the respondent for permitting drunkenness on her licensed premises, after the above facts had been proved by the prosecution, the justices found that the respondent acted reasonably in endeavouring to restore the man to consciousness and took all reasonable steps for preventing drunkenness on the premises, and they therefore dismissed the summons without calling upon the respondent for her defence.

HELD—that on the above facts there was evidence to support the finding of the justices. TOWNSEND *v.* ARNOLD, 75 J. P. 423—Div. Ct.

(b) Sale by Unlicensed Person.

See also REVENUE, No. 11.

13. *Sale by Retail—Wholesale Dealer's Licence—Sale of Wholesome Quantity—Delivery by Retail Quantities—Licensing Act, 1872* (35 & 36 Vict. c. 94), s. 3.—The respondent held a wholesale beer dealer's licence, which empowered him to sell beer in quantities of not less than four-and-a-half gallons. On April 8th, 1910, one J. B. bought at the licensed premises eighteen quart bottles of stout. On the same day J. B. paid to the respondent 6s., the price of the eighteen quart bottles of stout, and the respondent agreed to store and deliver the bottles as the purchaser from time to time might require. The respondent gave on April 8th to J. B. a receipt and in his presence put aside eighteen quart bottles of stout, which were placed in a locker under

IV. Offences—Continued.

the counter in the shop together with a bill-head bearing J. B.'s name. From time to time the stout delivered was taken from the bottles which had been set aside by the respondent on April 8th, and each delivery was recorded on the billhead bearing J. B.'s name which had been placed with the bottles. On May 28th, 1910, the last two of the eighteen bottles paid for by J. B. on April 8th were delivered at his house in accordance with an order given by him.

HELD—that there was a complete sale on April 8th, 1910, and that the respondent had not sold in respect of the last delivery the stout by retail without a licence, contrary to sect. 3 of the Licensing Act, 1872.

HALES v. BUCKLEY, [1911] W. N. 32; 104 [L. T. 34; 75 J. P. 214—Div. Ct.]

(c) Sale at Unlicensed Place.

14. *Sale by Brewer's Drayman—Liability of Employer—No Appropriation by Employer—Aiding and Abetting Sale—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.*—The appellants were brewers, and by the system in use in connection with their business each of their draymen had a book called an "order and delivery book," which he took out each day, in which it was his duty to enter, when received, orders for beer, and hand in each evening to the appellants' clerk at their office. Each evening the drayman entered on a "load ticket" the orders for next day's delivery, which would be handed with the order and delivery book to the appellants' clerk. From these the loads for the next day's deliveries were made up, and it was the duty of a foreman and certain clerks to see that only a sufficient amount of beer was loaded to satisfy such day's orders. One of the appellants' draymen, on May 1, 1908, gave in his order and delivery book, which contained the names of three persons, W., L., and F., the order for each being one crate of bottled beer. On May 2 the drayman went out with a horse and van containing crates and bottled beer of the appellants. None of the goods bore the name of any customer for whom the goods were intended, and there was no appropriation or identifying marks upon any of the bottles or crates. The drayman delivered a crate to F., two bottles to one B., one bottle to L., and one bottle to W. There was no entry in the book of a single bottle as the order of W. and L. The quantities delivered were paid for on delivery, and the money was duly accounted for to the appellants at the end of the day. Draymen were warned not to deliver beer unless an order for same had first been taken to the licensed premises. The drayman having been convicted of selling beer without being duly licensed, the appellants were subsequently charged and convicted of aiding and abetting him in the commission of that offence, the justices having come to the conclusion that no sufficient appropriation of the bottles

of beer had taken place before they left the licensed premises.

HELD—that the conviction was right.

Coker v. McMullen ((1900) 81 L. T. 784) followed.

STANSFIELD & Co. v. ANDREWS, 100 L. T. [529; 73 J. P. 167; 25 T. L. R. 259; 22 Cox, C. C. 84—Div. Ct.]

(d) Selling or Keeping Open during Prohibited Hours.

[No paragraphs in this vol. of the Digest.]

(e) Miscellaneous Offences.

See GAMING, No. 7.

V. SALE TO CHILDREN.

15. *Child Under 14 in Bar Parlour of Licensed Premises—Liability of Licensee for Act of his Wife—Children Act, 1908 (8 Edw. 7, c. 67), s. 120.*—The appellant, who was the licensee of a public-house, was convicted under sect. 120 of the Children Act, 1908, of having unlawfully allowed a child under the age of 14 to be in the bar of his licensed premises while the premises were open. The child in question, a girl of ten, had gone to the licensed premises in the evening with an elder sister to see the appellant's wife, who was a dressmaker and carried on business in a room on the upper floor of the premises, about a dress she was making for the elder girl. When the two girls entered the licensed premises the appellant's wife saw them and, without the appellant's knowledge, invited them to wait in the bar parlour while she went to her work-room to bring down the dress so as to avoid the necessity of lighting up the work-room, which was almost in darkness. The girls went into the bar parlour and waited there for the dress to be brought. While they were so waiting there were no customers in the bar parlour, nor was any intoxicating liquor sold there during that time. The appellant did not see the two girls enter, nor did he know they were in the bar parlour until his attention was called to their presence by police officers who had entered.

HELD—that the conviction must be quashed, as in the circumstances the appellant was not responsible for the action of his wife.

RUSSON v. DUTTON (No. 1), 104 L. T. 599; 75 [J. P. 207; *sub nom.* RUSSON v. DUTTON (No. 2), 27 T. L. R. 198—Div. Ct.]

16. *Exclusion of Children from Bar—Room or Bar Partitioned off from Bar—Children Act, 1908 (8 Edw. 7, c. 67), s. 120.*—A licence holder was convicted under sect. 120 of the Children Act, 1908, in respect that he had permitted three young children to be in a room or box, in the licensed premises, situated at the end of the bar, but separated therefrom by a partition 7 feet high and closed by a door. There was evidence to the effect that the room or box in question was used as a luncheon room where intoxicating liquor was served along with food, but there was no evidence that it was mainly or exclusively used for the sale or consumption of intoxicating liquor.

V. Sale to Children—Continued.

HELD—that the room or box was not a part of the bar of the premises, and that the conviction must be quashed.

DONAGHUE v. MCINTYRE, [1911] S. C. (J.) 61 ;
[48 Sc. L. R. 310 ; 6 Adam, 422—Ct. of Justy.]

VI. HABITUAL DRUNKARDS.

[No paragraphs in this vol. of the Digest.]

VII. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

INVENTIONS.

See PATENTS.

ISLE OF MAN.

See DEPENDENCIES AND COLONIES.

JAMAICA.

See DEPENDENCIES AND COLONIES.

JOINT STOCK COMPANIES.

See COMPANIES.

**JOINT TENANCY AND
TENANCY IN COMMON.**

See DESCENT AND DISTRIBUTION ; REAL
PROPERTY AND CHATTELS REAL ;
WILLS.

JOINTURES.

See HUSBAND AND WIFE ; REAL PRO-
PERTY ; RENT-CHARGES ; SETTLE-
MENTS.

JUDGES.

[No paragraphs in this vol. of the Digest.]

JUDGMENT.

See DAMAGES, No. 7 ; PARTNERSHIP,
No. 2 ; PRACTICE, XII. ; SET-OFF
AND COUNTERCLAIM.

JUDGMENT SUMMONS.

See COUNTY COURTS.

JUDICIAL COMMITTEE.

See COURTS.

JUDICIAL SEPARATION.

See HUSBAND AND WIFE.

JURIES.

[No paragraphs in this vol. of the Digest.]

JURISDICTION.

See ACTION ; CONFLICT OF LAWS ;
COUNTY COURTS ; COURTS ; MAGIS-
TRATES, ETC.

JUSTICE OF THE PEACE.

See MAGISTRATES.

JUVENILE OFFENDERS.

See CRIMINAL LAW AND PROCEDURE ;
INFANTS, VI.

LACHES.

See COMPANIES, No. 35 ; EQUITY ;
LIMITATION OF ACTIONS.

**LANCASTER PALATINE
COURT.**

See COURTS.

LAND.

See REAL PROPERTY AND CHATTELS
REAL ; SALE OF LAND, ETC.

LAND AGENTS.

See AGENCY ; SALE OF LAND ; VALUERS
AND APPRAISERS.

LAND CHARGES.

See REAL PROPERTY AND CHATTELS
REAL; SALE OF LAND.

LAND CLAUSES CON-
SOLIDATION ACTS.

See COMPULSORY PURCHASE AND COM-
PENSATION.

LAND DRAINAGE ACTS.

See SEWERS AND DRAINS.

LAND IMPROVEMENT.

[No paragraphs in this vol. of the Digest.]

LAND REGISTRY.

See REAL PROPERTY AND CHATTELS
REAL; SALE OF LAND.

LAND TAX.

1. *Railway under Land Exonerated from Land Tax*—*Land Tax Act, 1797* (30 Geo. 3, c. 5), ss. 4, 17—*Land Tax Redemption Act, 1802* (42 Geo. 3, c. 116), ss. 8, 38.]—Where land is exonerated from land tax at a time when it is in its ordinary normal condition as mere land, it is entirely exonerated *a centro usque ad calum*, irrespective of the use to which such land may in future be put. It is otherwise, however, where the land at the date of redemption is not in its ordinary normal condition, and special circumstances exist from which an intention to redeem a partial interest only can be inferred, as, for example, where the surface and open mines below are in different occupations, and are separately assessed to the tax, and the price of redemption is arrived at upon the basis of one of such assessments only.

CENTRAL LONDON RAILWAY *v.* CITY OF
[LONDON LAND TAX COMMISSIONERS, [1911]
1 Ch. 467; 80 L. J. Ch. 348; 104 L. T. 245;
75 J. P. 292; 27 T. L. R. 296; 9 L. G. R. 580
—Eady, J.

2. *Railway under Land Exonerated from Land Tax*—*Extent of Exoneration of Land Abutting on Highway*—*Land Tax Act, 1797* (38 Geo. 3, c. 5), ss. 4, 17—*Land Tax Redemption Act, 1802* (42 Geo. 3, c. 116), ss. 8, 38.]—Where the land tax has been redeemed on lands or houses abutting on a public street

or highway the presumption is that the exoneration extends to the middle line of such street or highway.

Decision of Eady, J. (*supra*) on this point reversed (Farwell, L.J., dissenting).

CENTRAL LONDON RAILWAY *v.* CITY OF LONDON
[LAND TAX COMMISSIONERS, [1911] 2 Ch.
467; 81 L. J. Ch. 20; 105 L. T. 391; 75
J. P. 529; 27 T. L. R. 561; 55 Sol. Jo. 714;
9 L. G. R. 1166—C. A.

LAND TRANSFER.

See REAL PROPERTY AND CHATTELS
REAL; SALE OF LAND.

LANDLORD AND TENANT.

	COL.
I. RELATION OF LANDLORD AND TENANT	313
[No paragraphs in this vol. of the Digest.]	
II. AGREEMENTS FOR LEASES	313
III. ESSENTIALS OF LEASE	313
[No paragraphs in this vol. of the Digest.]	
IV. PARCELS OR PREMISES INCLUDED IN THE DEMISE.	
(a) Easements	314
(b) Fixtures	314
(c) Sporting Rights	314
V. DURATION OF TENANCY.	
(a) Notice to Terminate	314
(b) Renewal	315
[No paragraphs in this vol. of the Digest.]	
(c) Tenancy at Will	315
[No paragraphs in this vol. of the Digest.]	
(d) Tenancy from Year to Year	315
[No paragraphs in this vol. of the Digest.]	
(e) Weekly Tenancy	315
(f) Life Tenancy	315
[No paragraphs in this vol. of the Digest.]	
VI. RENT	315
VII. RESTRICTIVE COVENANTS	315
VIII. RATES, TAXES AND OUTGOINGS.	
(a) Charges borne by Lessor	317
[No paragraphs in this vol. of the Digest.]	
(b) Factories and Workshops	317
[No paragraphs in this vol. of the Digest.]	
(c) Paving Expenses	317
[No paragraphs in this vol. of the Digest.]	
(d) Requirements of Sanitary Authority	317
[No paragraphs in this vol. of the Digest.]	
IX. REPAIRS, MAINTENANCE, AND IMPROVEMENT.	
(a) Alteration	317
(b) Building Covenants	317
[No paragraphs in this vol. of the Digest.]	

Landlord and Tenant—Continued.

IX. REPAIRS, MAINTENANCE, AND IMPROVEMENT—Continued.

- (c) Insurance Covenants . . . 317
 [No paragraphs in this vol. of the Digest.]
 (d) Liability of Landlord for Non-Repair . . . 317
 [No paragraphs in this vol. of the Digest.]
 (e) Repairing Covenants . . . 317

X. COVENANTS BY LESSOR.

- (a) Restrictive Covenants . . . 318
 [No paragraphs in this vol. of the Digest.]
 (b) Quiet Enjoyment . . . 318

XI. DEROGATION FROM GRANT . . . 319

XII. FORFEITURE.

- (a) Notice of Breach of Covenant . . . 319
 [No paragraphs in this vol. of the Digest.]
 (b) Re-entry . . . 319
 [No paragraphs in this vol. of the Digest.]
 (c) Relief against Forfeiture . . . 319

XIII. DWELLING-HOUSES AND FLATS . . . 319

XIV. LICENSED PREMISES.

- (a) Covenants against Forfeiture of Licence . . . 320
 [No paragraphs in this vol. of the Digest.]
 (b) Maintenance of Business and Licence . . . 320
 [No paragraphs in this vol. of the Digest.]
 (c) Tied Houses . . . 320

XV. COVENANTS AGAINST ASSIGNING OR UNDERLETTING . . . 320

XVI. EFFECT OF ASSIGNMENT ON COVENANTS.

- (a) Assignment of Lease . . . 321
 (b) Assignment of Reversion . . . 321

See also BANKRUPTCY, No. 26; COUNTY COURTS, No. 3; DISTRESS; ESTOPPEL, No. 3; GAME, No. 5; MISREPRESENTATION, Nos. 3, 4; PRACTICE, No. 11; REVENUE, No. 18; SPECIFIC PERFORMANCE, No. 3; TRUSTS, No. 1.

I. RELATION OF LANDLORD AND TENANT.

[No paragraphs in this vol. of the Digest.]

II. AGREEMENTS FOR LEASES.

See also No. 17, *infra*.

1. *Innocent Misrepresentation by Lessor*—*Rescission*.]—Innocent misrepresentation by the lessor (unless he has no title at all or demises what is the lessee's already) does not invalidate an agreement for a lease duly perfected by deed.

Whittington v. Seale-Hayne ((1900) 16 T. L. R. 181) considered.

MILCH v. COBURN, 27 T. L. R. 170; 55 Sol. Jo. 170—Joyce, J.

See S. C. on appeal, No. 7, *infra*.

III. ESSENTIALS OF LEASE.

[No paragraphs in this vol. of the Digest.]

IV. PARCELS OR PREMISES INCLUDED IN THE DEMISE.

(a) Easements.

2. *Implied Grant of Right of Way—Date of Lease altered Subsequent to Execution—Estoppel*.]—In May, 1903, the defendant executed leases, bearing no date except the year 1903, of twelve houses to G., who had erected the houses under a building agreement with B. In 1904, by arrangement between the defendant and G., the dates of the leases were altered from , 1903, to July, 1904. G. afterwards mortgaged four of the houses to the plaintiff.

HELD—that the alteration of dates did not invalidate the leases and that the defendant was stopped from showing that the date inserted by himself in 1904 in the leases was not the date from which the demise operated, in order to prevent the plaintiff from relying on the circumstances existing in July, 1904.

HELD ALSO, on the facts as found—that an intention on the defendant's part to grant a certain right of way as being reasonably necessary for the enjoyment of the houses must be inferred, and that an implied right of way was granted by the leases.

RUDD *v.* BOWLES, [1911] W. N. 240; 132 L. T. Jo. [86—Neville, J.]

(b) Fixtures.

See also CRIMINAL LAW, No. 63.

3. *Trade Fixtures—Lease—Shop Covenant by Tenant to Complete Fittings—Covenant to Deliver up Demised Premises in Good Repair—Tenant's Right to Remove Trade Fixtures Affixed in Pursuance of the Covenant*.]—By the lease of an unfinished shop the lessees covenanted at their own expense to "complete and finish . . . all necessary fittings for the carrying on of the trade of a provision merchant," and also to deliver up the demised premises in good repair at the end of the term. In pursuance of their covenant the lessees affixed certain fittings to the premises which became "trade fixtures," and they removed them shortly before the end of the term.

HELD (Vaughan Williams, L.J., dissenting)—that the covenants in the lease did not take away the right of the lessees during the term to remove the fittings as trade fixtures.

MOWATS, LD. *v.* HUDSON BROTHERS, LD., 105 [L. T. 400—C. A.]

(c) Sporting Rights.

See FISHERIES, No. 3; GAME, No. 5.

V. DURATION OF TENANCY.

(a) Notice to Terminate.

4. *Notice to Quit—Sufficiency—Tenancy for Three Years and so on from Year to Year*.]—By an agreement a farm was let to the defendants for a period of three years commencing on March 25th, 1907, and so on from year to year until the tenancy should be determined by either party giving to the other one year's

V. Duration of Tenancy—Continued.

plaintiffs in writing. On March 21st, 1910, the plaintiffs gave the defendants a notice to quit on March 25th, 1911.

HELD—that the notice so given was good.

HERRON v. MARTIN, 27 T. L. R. 431—Darling, [J.]

5. *Weekly Tenancy—Notice to Quit.*—A week's notice to quit, expiring on any day of the week, is sufficient to determine a weekly tenancy.

SKELLY v. THOMPSON, 45 I. L. T. 138—Wright, J., [Ireland.]

(b) Renewal.

[No paragraphs in this vol. of the Digest.]

(c) Tenancy at Will.

[No paragraphs in this vol. of the Digest.]

(d) Tenancy from Year to Year.

[No paragraphs in this vol. of the Digest.]

(e) Weekly Tenancy.

See No. 4, *supra*.

(f) Life Tenancy.

[No paragraphs in this vol. of the Digest.]

VI. RENT.

6. *Construction of Lease—First Quarter's Rent Payable "on the 25th of December next."*—By a lease dated December 23rd, 1910, but which had been executed earlier by the lessor, the rent was payable by equal quarterly payments to be made on the usual quarter days "of which the first shall be made on the 25th day of December next."

HELD—that the first quarterly payment of rent was due on December 25th, 1910.

Decision of Hamilton, J. (27 T. L. R. 439) affirmed.

SIMNER v. WATNEY, *Times*, December 20th. [1911—C. A.]

VII. RESTRICTIVE COVENANTS.

See also No. 19, *infra*.

7. *Underlease—Construction—Absolute Covenant or Qualifying Clause.*—An underlease of a house contained the following clause: "The tenant shall use the said premises only for private residential purposes, but shall be entitled to carry on thereon a high-class boarding establishment."

HELD, on construction—that the words "but shall be entitled to carry on thereon a high-class boarding establishment" were an absolute covenant for title by the underlessor, and not merely a qualification of the preceding words.

Decision of Joyce, J. (27 T. L. R. 170; 55 Sol. Jo. 170) reversed.

MILCH v. COBURN, 27 T. L. R. 372; 55 Sol. Jo. 441—C. A.]

8. *Sale of Business—Restrictive Covenant by Vendor—Equitable Negative Easement—Surrender of Lease by Vendor—Grant of New Lease*

—*Lessee Taking with Notice of Restrictive Covenant.*—S. carried on the business of a general butcher at No. 170, H. Street, and the business of a pork butcher in the same street at No. 137, occupied by him under a lease which prohibited the carrying on of any noisy trade other than that of a pork butcher. In 1908 he sold his business at No. 170, covenanting with the purchaser that he would not sell or deal in fresh meat at the premises No. 137, also that he would use his best endeavours to promote the business and secure the custom to the purchaser, and would not open a similar business within three miles. In 1909 S. surrendered the lease of No. 137 to the landlord, who thereupon granted to S.'s son a new lease for a longer term in which the word "pork" before the word "butcher" was struck out. Previous to such surrender the son knew of the restrictive covenant under which S. had placed the business at No. 137. S. closed the shop, which in a few days was opened by the son as a general butcher's shop.

In an action by the purchaser of No. 170 against the vendor and his son for breach of the covenant:—

HELD—that the action failed, inasmuch as the landlord, on accepting the surrender of the lease of No. 137, not having either actual or constructive notice of the restrictive covenant, was entitled to deal with the property unencumbered by any equity of any kind.

Statement in Ashburton's "Principles of Equity," p. 75, that "a purchaser for valuable consideration without notice can give a good title to a purchaser from him with notice," approved.

Louthier v. Carlton ((1741) 2 Atk. 242) and *Barrow's Case* ((1880) 14 Ch. D. 432) followed.

Decision of Scrutton, J. (104 L. T. 140; 27 T. L. R. 157) reversed.

WILKES v. SPOONER, [1911] 2 K. B. 473; 80 [L. J. K. B. 1167; 104 L. T. 911; 27 T. L. R. 426; 55 Sol. Jo. 479—C. A.]

9. *Restrictive Covenant in Lease—Covenant not to Carry on Business of "Fishmonger"—Prohibition against Using Premises "otherwise than as a Restaurant"—Carrying on Fried Fish Shop—Annoyance to Neighbours—Injunction.*—A lease of premises contained a covenant restricting the lessee from carrying on on the premises the business of a "fishmonger," or any other trade which should be a nuisance or an annoyance to the tenants or occupiers of any messuage in the neighbourhood. The lessee let a part of the premises to a tenant who agreed not to use the premises "otherwise than as a restaurant," and not to do upon the premises any act or thing which should or might be a "nuisance, annoyance, or inconvenience" to the lessee or her tenants or the occupiers of any adjoining houses or the neighbourhood. The tenant set up and carried on on the premises the business of a fried fish shop for the sale of cooked fish for consumption on and off the premises. The occupier of the adjoining house had complained of the annoyance caused by the steam and smell from the fish shop. In an action by

VII. Restrictive Covenants—Continued.

the lessee for an injunction to restrain the tenant from using the premises otherwise than as a restaurant, or so as to be an annoyance or inconvenience to occupiers in the neighbourhood:—

HELD—that the carrying on of the business of a fried fish shop was not the carrying on of the business of a “fishmonger” within the meaning of the covenant in the lease; but that the use of the premises as a fried fish shop was a use of the same “otherwise than as a restaurant,” and was an “annoyance or inconvenience” to the occupiers of adjoining houses and the neighbourhood, and that the lessee was entitled to the injunction claimed.

ERRINGTON v. BIRT, 105 L. T. 373—Avory, J.

10. Interlocutory Injunction for Breach of Covenants in Lease—Scope of Injunction—Sub-lessee not Added as Party by Plaintiff.—Where the lessor does not add the sub-lessee as a party to his action for an injunction against his lessee for breach of the covenants contained in the lease, although he may be entitled to an injunction against such lessee, the scope of the injunction must be confined to the lessee, his servants and agents, and must not extend to the sub-lessee.

METROPOLITAN DISTRICT RY. CO., LD. v. [EARL'S COURT, LD.], 55 Sol. Jo. 807—Lush, J.

VIII. RATES, TAXES AND OUTGOINGS.

(a) Charges borne by Lessor.

[No paragraphs in this vol. of the Digest.]

(b) Factories and Workshops.

[No paragraphs in this vol. of the Digest.]

(c) Paving Expenses.

[No paragraphs in this vol. of the Digest.]

(d) Requirements of Sanitary Authority.

[No paragraphs in this vol. of the Digest.]

IX. REPAIRS, MAINTENANCE, AND IMPROVEMENT.

(a) Alteration.

See No. 11, *infra*.

(b) Building Covenants.

[No paragraphs in this vol. of the Digest.]

(c) Insurance Covenants.

[No paragraphs in this vol. of the Digest.]

(d) Liability of Landlord for Non-repair.

[No paragraphs in this vol. of the Digest.]

(e) Repairing Covenants.

11. “Repair and Keep in Thorough Repair and Good Condition”—Old House—Natural Decay—Dangerous Structure Notice—Rebuilding Front Wall—Tenant's Obligations under Repairing Covenants.—A tenant who has covenanted to repair and keep in thorough repair and good condition the demised premises is bound to rebuild the front wall of the premises if required to do so by the local authority, on the ground

that the structure is dangerous, even though the condition of the wall is caused by the lapse of time and nothing else, such a work being only a repair of a subsidiary portion of the premises, and not amounting to a substantial change in the character of the property demised.

The obligations of a lessee under repairing covenants considered.

Gutteridge v. Munyard ((1834) 7 C. & P. 129), **Torrens v. Walker** ([1906] 2 Ch. 166), and **Lister v. Lane** ([1893] 2 Q. B. 212) explained and distinguished.

Proudfoot v. Hart ((1890) 25 Q. B. D. 42) followed.

Decision of Div. Ct. affirmed.

LURCOTT v. WAKELY AND WHEELER, [1911] 1 K. B. 905; 80 L. J. K. B. 713; 104 L. T. 290; 55 Sol. Jo. 290—C. A.

12. Covenant to Repair—Breach—Damages Recovered against Lessee—Claim by Lessee against Sub-lessee.—The plaintiff was the lessee of seven houses, two of which he sublet to the defendant. The covenant to repair in the sub-lease was in the same terms as in the head lease; in both leases a three months' notice to repair was provided for, which if not complied with worked a forfeiture. There was no covenant in the sub-lease of indemnity against the covenants in the head lease, nor was there any covenant to perform the covenants in the head lease. Notice to repair the premises having been given by the head landlord to the plaintiff, the latter served a similar notice to repair upon the defendant. These notices were not complied with, and the head landlord brought an action against the plaintiff to recover the whole of the premises. In that action the defendant obtained leave to appear and defend. Thereafter the plaintiff obtained an order, to which the defendant was not a party, for relief against forfeiture on payment of an amount for rent and on payment of costs as between solicitor and client, without prejudice to any claim he might have against the defendant. The plaintiff thereupon sued the defendant to recover those costs and also certain costs he had paid to his solicitor.

HELD—that there being no covenant of indemnity by the defendant or an express covenant by him to perform all the covenants and conditions of the head lease, the costs in question were not recoverable from the defendant.

Dictum of Lindley, L.J., in **Ebbetts v. Conquest** ([1895] 2 Ch. 377) followed.

CLARE v. DOBSON, [1911] 1 K. B. 35; 80 L. J. [K. B. 158; 103 L. T. 506; 27 T. L. R. 22—Lord Coleridge, J.

X. COVENANTS BY LESSOR.

(a) Restrictive Covenants.

[No paragraphs in this vol. of the Digest.]

(b) Quiet Enjoyment.

See No. 14, *infra*.

XI. DEROGATION FROM GRANT.

See No. 14, *infra*.

XII. FORFEITURE.

(a) Notice of Breach of Covenant.

[No paragraphs in this vol. of the Digest.]

(b) Re-entry.

[No paragraphs in this vol. of the Digest.]

(c) Relief against Forfeiture.

13. *Breach of Covenant—Principles on which Court will Grant Relief—Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 14 (2).—*Per* Cozens-Hardy, M.R.:—An applicant, under sect. 14 (2) of the Conveyancing Act, 1881, for relief against forfeiture incurred for breach of covenant must, as far as possible, remedy the breaches alleged in the notice served on him by the lessor, and pay reasonable compensation for the breaches which cannot be remedied. Secondly, if the breach is of a negative covenant, such as not to carry on a particular business on the demised premises, the applicant must undertake to observe the covenant in future, or at least must not avow his intention to repeat the breach complained of. Thirdly, if the act complained of, though not a breach of a negative covenant, is of such a nature that the Court would have restrained it during the currency of the lease on the ground of waste, the applicant must undertake to make good the waste if it be possible to do so. Fourthly, if the act complained of does not fall under either the second or third head, but is one in respect of which damages, other than nominal, might be recovered in an action on the covenant, the applicant must undertake not to repeat the wrongful act or to be guilty of a continuing breach.

ROSE v. SPICER, ROSE v. HYMAN, [1911] 2 [K. B. 234; 80 L. J. K. B. 1011; 104 L. T. 619; 27 T. L. R. 367; 55 Sol. Jo. 405—C. A.]

XIII. DWELLING HOUSES AND FLATS.

See also No. 7, *supra*; No. 19, *infra*; CONTRACT, No. 7.

14. *Tenancy of Flat—Erection of Staircase in Front of Lessee's Windows—Meaning of "Demised Premises"—Nuisance—Quiet Enjoyment—Light and Air—Privacy—Easement—Grantor Derogating from Own Grant—Interference with Lessee's Rights.*—The plaintiffs, who were tenants of a ground floor flat, complained that the tenant of the flat overhead had erected a staircase, leading from the garden to her flat, and had thereby broken a covenant in her agreement not to do or suffer anything on the premises demised to her which might be a nuisance to the landlord or the other tenants. They further pleaded that the lessor, by giving licence for such erection, had broken her covenant with the plaintiffs for quiet enjoyment, and that, by allowing the plaintiffs' comfort and privacy to be interfered with, she had derogated from her own grant.

HELD—that the first floor tenant had not erected the staircase on the "demised premises" within the meaning of the covenant against creating a nuisance, and that, inasmuch as the staircase had not rendered the plaintiffs' premises materially less fit for the purpose for which they were demised, there was no derogation from the lessor's grant.

HELD, FURTHER—that to constitute a breach of covenant for quiet enjoyment there must be some physical and substantial interference with the plaintiffs' occupation, to which a mere annoyance, such as lessening of privacy, will not amount.

BROWNE v. FLOWER, [1911] 1 Ch. 219; 80 [L. J. Ch. 181; 103 L. T. 557; 55 Sol. Jo. 108—Parker, J.]

XIV. LICENSED PREMISES.

(a) Covenants against Forfeiture of Licence.

[No paragraphs in this vol. of the Digest.]

(b) Maintenance of Business and Licence.

[No paragraphs in this vol. of the Digest.]

(c) Tied Houses.

See AGENCY, No. 8; INTOXICATING LIQUORS, Nos. 2, 11.

XV. COVENANTS AGAINST ASSIGNING OR UNDERLETTING.

15. *Covenant Not to Assign without Consent—"Respectable and Responsible Person"—Assignment to a Corporation—Failure to Obtain Consent—Forfeiture.*—A lease contained a covenant by the lessee against assigning or underletting without the previous written consent of the lessor, but such consent not to be withheld in respect of a respectable and responsible person. Subsequent assignees with consent assigned to a limited company, after the consent of the lessor had been refused.

HELD—that the words "a respectable and responsible person" include a corporation, and therefore that an assignment without the consent of the lessor to a limited company, which was respectable and responsible, did not constitute a breach of covenant.

HARRISON, AINSLIE & CO. v. CORPORATION OF BARROW-IN-FURNESS ((1891) 63 L. T. 834) not followed.

Decision of NEVILLE, J. ([1901] 1 Ch. 754; 79 L. J. Ch. 431; 102 L. T. 427; 26 T. L. R. 387; 17 MANSION, 217) reversed.

WILLMOTT v. LONDON ROAD CAR CO., LD., [1910] 2 Ch. 525; 80 L. J. Ch. 1; 103 L. T. 447; 27 T. L. R. 4; 54 Sol. Jo. 873—C. A.]

16. *Refusal of Consent by Lessor except on Payment—Lessee Entitled to Disregard Covenant—Declaratory Order—Costs.*—Where a lessor refuses his consent to an assignment or underletting, except upon payment of a fine, the lessee is entitled to disregard the covenant against assignment or underletting without consent, and to assign or underlet as if such consent had been given. But he is also entitled

XV. Covenants against Assigning or Undertaking—*Continued.*

to a declaratory judgment to that effect and to the costs of the action.

Dicta in *Andrew v. Bridgman* ([1908] 1 K. B. 596) approved and applied. *Jenkins v. Price* ([1907] 2 Ch. 229, 235) and *Evans v. Levy* ([1910] 1 Ch. 452) overruled as to costs.

West v. Gwynne, [1911] 2 Ch. 1; 80 L. J. [Ch. 578; 104 L. T. 759; 27 T. L. R. 444; 55 Sol. Jo. 519—C. A.

17. *Fine or Sum of Money in the Nature of a Fine—Lease Executed before 1892—Retrospective Effect of Act—Conveyancing and Law of Property Act, 1892* (55 & 56 Vict. c. 13), s. 3.]—Sect. 3 of the Conveyancing and Law of Property Act, 1892, which prohibits the imposition of a fine in respect of a licence to assign or underlet, applies as well to leases executed before as to those executed after the passing of the Act.

Decision of *Joyce, J.* ([1911] W. N. 35; 104 L. T. 277; 27 T. L. R. 237; 55 Sol. Jo. 254) affirmed.

West v. Gwynne, [1911] 2 Ch. 1; 80 L. J. [Ch. 578; 104 L. T. 759; 27 T. L. R. 444; 55 Sol. Jo. 519—C. A.

18. *An Agreement for Lease—Usual Covenants—Implied Covenant—Ceylon.*]—An agreement for a lease of a house and land in Ceylon contained a provision that the lease should contain all covenants and conditions usually inserted in leases of such nature, and further provided that the term "lessee" should include heirs, executors, administrators, or assigns, but there was no express agreement that it should contain a covenant on the part of the lessee not to assign either with or without the lessor's consent. There was a provision that the lessor should "not withhold except for exceptionally strong and good reasons" his consent to an assignment or sublease.

HELD—that a provision that the lease should contain a covenant by the lessee not to assign or sub-demise his interest without the consent of the lessor first had and obtained could not be introduced into the agreement by implication.

De Soysa v. De Pless Pol, 105 L. T. 642—P. C.

XVI. EFFECT OF ASSIGNMENT ON COVENANTS.

See also CONTRACT, No. 6.

(a) Assignment of Lease.

19. *Building Agreement—Restrictive Covenant—Covenant to Keep Windows Closed—Covenant to Run with Land—Flat—Tenant—Notice—Accepting Less than Forty Years' Title—Injunction.*]—A builder, L., who had entered into an agreement with a landlord by which a lease of certain property was to be granted him on the completion of certain buildings thereon, covenanted with B., the owner of adjoining land, that the windows in the said buildings facing B.'s land should be

obscured and fixed. A block of flats was erected, and a lease granted to L., by whom it was subsequently mortgaged and the equity of redemption released. The defendant became tenant of one of the flats and opened one of the fixed windows.

HELD—that the covenant was a restrictive covenant, binding on the leasehold interest, of which the defendant had constructive notice, and could be enforced by injunction.

Abbey v. Gutierrez, 55 Sol. Jo. 364—Warrington, J.

(b) Assignment of Reversion.

See MORTGAGE, Nos. 6, 7.

LARCENY.

See CRIMINAL LAW AND PROCEDURE.

LAW SOCIETY.

See SOLICITORS.

LEAVE AND LICENCE.

See EASEMENTS.

LEGACIES.

See WILLS.

LEGACY DUTY.

See DEATH DUTIES.

LEGITIMACY AND LEGITIMATION.

See BASTARDY.

LETTERS.

See CONTRACT; COPYRIGHT.

LETTERS PATENT.

See PATENTS AND INVENTIONS.

LIBEL AND SLANDER.

I. LIBEL.	COL.
(a) Fair Comment on Matters of Public Interest	323
[No paragraphs in this vol. of the Digest.]	
(b) Miscellaneous	323
[No paragraphs in this vol. of the Digest.]	
(c) Practice	323
(d) Privilege	324
(e) Publication	324
[No paragraphs in this vol. of the Digest.]	
(f) Words Capable of Defamatory Meaning	324
II. SLANDER.	
(a) Actionable <i>per se</i>	324
(b) Practice	324
(c) Privilege	325
[No paragraphs in this vol. of the Digest.]	
(d) Special Damage	325
[No paragraphs in this vol. of the Digest.]	
(e) General	325
III. TRADE LIBEL	325
IV. CRIMINAL PROCEDURE	325
[No paragraphs in this vol. of the Digest.]	

I. LIBEL.**(a) Fair Comment on Matters of Public Interest.**

[No paragraphs in this vol. of the Digest.]

(b) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

(c) Practice.

See also PLEADING, No. 3; PRACTICE, Nos. 9, 22.

1. *Particulars—Report of Traders' Association—Inquiry as to Plaintiff—Name of Person Making Inquiry.*—The defendants, an association of traders formed for the purpose, *inter alia*, of supplying information to its members, issued a report in which appeared an inquiry as to the address of the plaintiff. The plaintiff sued the defendants in respect of this publication, alleging that by it the defendants meant and were understood to mean that he had moved from the address where he had resided for eight years, and where he still resided, without leaving any indication of his movements, with the object of avoiding payment of his debts. The defendants denied the innuendo and pleaded that the words were published on a privileged occasion and without malice. The defendants by their particulars stated that a member of their association made an inquiry with regard to the plaintiff, and the secretary, in pursuance of his duty to further the objects of the association, instructed their inquiry officer to inquire for the plaintiff, and that the inquiry officer was informed that the plaintiff had left, and thereupon the defendants, in the honest belief that this was true, published the information for the benefit of the members. On an application by the plaintiff for further and better particulars:—

HELD—that the defendants were bound to give further particulars to enable the plaintiff to test the question whether the inquiry was made by a member of the defendant association.

ELKINGTON v. LONDON ASSOCIATION FOR PROTECTION OF TRADE, 27 T. L. R. 339—C. A.

(d) Privilege.

2. *List Issued to Members of Voluntary Society for the Protection of Trade.*—Inquiries involving imputations on the solvency of persons contained in a paper issued only to its members by a voluntary society for the protection of trade are not published on a privileged occasion.

ELKINGTON v. LONDON ASSOCIATION FOR PROTECTION OF TRADE, 28 T. L. R. 117—Darling, J.

(e) Publication.

[No paragraphs in this vol. of the Digest.]

(f) Words Capable of Defamatory Meaning.See No. 6, *infra*.**II. SLANDER.****(a) Actionable *per se*.**

3. *Innuendo—Dishonesty—Liability of Master for Words Uttered by Servant—Scope of Employment.*—A milkman brought an action of damages for slander against his employers. He averred that there having been a dispute between their manager and him as regards a balance alleged to be due by him, a foreman, on the manager's instructions, had said to him—"I'll give you a piece of advice. If you are wise you'll turn out to work, because I have been instructed by" the manager "to place the matter in the hands of the police."

HELD—that the words complained of were not slanderous.

HELD FURTHER—that, assuming the words were slanderous, the foreman in uttering them, upon the instructions of the manager, was not acting within the scope of his employment, and that accordingly the action against his employers was irrelevant.

M'ADAM v. CITY AND SUBURBAN DAIRIES, LD., [1911] S. C. 429; 48 Sc. L. R. 318—Ct. of Sess.

(b) Practice.

See also PRACTICE, No. 34.

4. *Costs—Payment into Court—Verdict for Smaller Sum.*—The plaintiff sued the defendant for slander in respect of a statement that the plaintiff had at a Parliamentary election voted twice in one division. The defendant admitted publication, but paid £10 10s. into Court, and pleaded in mitigation of damages certain letters of apology which he had written. At the trial the jury found a verdict for the plaintiff with one farthing damages, and Darling, J. held that the plaintiff was entitled to the costs of the action.

HELD—that there was no reason shown for interfering with the exercise of the judge's discretion in making the order that he did.

II. Slander—Continued.

Decision of Darling, J. (27 T. L. R. 67) affirmed.

KINNELL *v.* WALKER, 27 T. L. R. 257—C. A.

(c) Privilege.

[No paragraphs in this vol. of the Digest.]

(d) Special Damage.

[No paragraphs in this vol. of the Digest.]

(e) General.

5. *Liability of Employer for Slander Uttered by Servant—Corporation—Scope of Employment.*—A. brought an action of damages for slander against the Corporation of Glasgow, in which she averred that B., a tax collector in their employment, while in the course of collecting police taxes at her house, had accused her of tampering with a receipt for the taxes in order to defraud his employers, and that on her repudiation of the charge he had assaulted her. She further alleged that B. had repeated the slander in the house of a neighbour and subsequently in the tax collector's office.

HELD—that B. in uttering the statements complained of was not acting within the scope of his employment, and that, accordingly, the action would not lie.

Decision of Ct. of Sess. ([1910] S. C. 693; 47 Sc. L. R. 630) reversed.

GLASGOW CORPORATION *v.* LORIMER (OR RID-
[DELL], [1911] A. C. 209; 80 L. J. P. C.
175; 104 L. T. 354; 55 Sol. Jo. 363; 48 Sc.
L. R. 399—H. L. (Sc.).

III. TRADE LIBEL.

6. *Disparagement of System Worked under a Patent—Imputation on Patentee.*—To disparage a trader's goods does not give ground for an action of libel, although, if special damage is proved, the plaintiff may recover in an action on the case. If, however, the words used, though directly disparaging goods, also impute such carelessness, misconduct, or want of skill in the conduct of his business by the trader, they may give grounds for an action of libel.

An attack upon the system worked under a patent does not necessarily involve an imputation upon the person who supplies the parts and licenses the use of the system.

GRIFFITHS *v.* BENN, 27 T. L. R. 346—C. A.

IV. CRIMINAL PROCEDURE.

[No paragraphs in this vol. of the Digest.]

LICENCE.

In respect of game—*See* GAME.

In respect of patent—*See* PATENTS AND INVENTIONS.

For marriage—*See* HUSBAND AND WIFE.

In respect of minerals—*See* MINES, MINERALS, AND QUARRIES.

In respect of hawkers and pedlars—*See* MARKETS AND FAIRS.

For sale of intoxicants—*See* INTOXICATING LIQUORS; REVENUE.

For music and dancing—*See* THEATRES, MUSIC HALLS, AND SHOWS.

For cabs, etc., and drivers—*See* METROPOLIS, IV.; STREET; TRAFFIC.

Excise Generally—*See* REVENUE.

LIEN.

See ADMIRALTY; BAILMENT; BANKERS; BILLS OF SALE; BUILDERS; CARRIERS; SHIPPING; SOLICITORS.

LIFE INSURANCE.

See INSURANCE.

LIGHT.

See EASEMENTS.

LIGHT RAILWAYS.

See TRAMWAYS AND LIGHT RAILWAYS.

LIMITATION OF ACTIONS.

	COL.
I. MISCELLANEOUS	326
II. ACKNOWLEDGMENT OF DEBT	327
III. PART PAYMENT	327
[No paragraphs in this vol. of the Digest.]	
IV. JUDGMENT	327
[No paragraphs in this vol. of the Digest.]	
V. FRAUD	327
[No paragraphs in this vol. of the Digest.]	
VI. RECOVERY OF MONEY CHARGED UPON LAND	327
VII. RIGHTS TO REAL PROPERTY	327
VIII. MORTGAGOR AND MORTGAGEE	328
IX. ACTIONS AGAINST EXECUTORS	328
X. TRUSTEES	328

See also COMPULSORY PURCHASE, No. 1; DEPENDENCIES, No. 13; FOOD, No. 1; FRIENDLY SOCIETIES, No. 2; POOR LAW, No. 1.

I. MISCELLANEOUS.

1. "*Statute of Limitations*"—*Public Authorities Protection Act*, 1893 (56 & 57 Vict. c. 61).—*Primâ facie* any statute which imposes a limitation upon an existing right of

I. Miscellaneous—Continued.

action is properly called a "statute of limitations."

The Public Authorities Protection Act, 1893, is a statute of limitations, for it imposes a limitation of time on an existing right of action, and there is nothing in the rest of the Act to prevent it being so considered.

GREGORY *v.* TORQUAY CORPORATION, [1911]
[2 K. B. 556; 80 L. J. K. B. 981; 105
L. T. 138; 75 J. P. 446; 55 Sol. Jo. 582;
9 L. G. R. 772—Div. Ct.]

See S. C. COUNTY COURTS, No. 8.

AFFIRMED ON APPEAL—132 L. T. Jo. 153; 46
L. J. N. C. 788—C. A.

II. ACKNOWLEDGMENT OF DEBT.

See No. 5, *infra*.

III. PART PAYMENT.

[No paragraphs in this vol. of the Digest.]

IV. JUDGMENT.

[No paragraphs in this vol. of the Digest.]

V. FRAUD.

[No paragraphs in this vol. of the Digest.]

VI. RECOVERY OF MONEY CHARGED UPON LAND.

See also No. 5, *infra*.

2. Rent-charge — Personal Covenant — Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.—Sect. 1 of the Real Property Limitation Act, 1874, qualifies sect. 3 of the Civil Procedure Act, 1833, so as to limit to twelve years since the last payment or acknowledgment the period within which the remedy upon a personal covenant to pay a rent-charge can be enforced.

SHAW *v.* CROMPTON, [1910] 2 K. B. 370; 80
[L. J. K. B. 52; 103 L. T. 501—Div. Ct.]

3. Legacy Charged on Land—Legatee Living on Farm upon which Legacy is Charged—Payment of Interest Implied.—Where a legatee continues to live on a farm which is charged with a legacy of £100 in his favour, an agreement that the legatee's board and lodging is to be in lieu of the interest on the legacy may be implied so as to prevent the Statute of Limitations running against the legacy.

HAMILTON *v.* MARTIN, 45 I. L. T. 140—Ross, J.,
[Ireland.]

VII. RIGHTS TO REAL PROPERTY.

See also SALE OF LAND, No. 10.

4. Trespass—Claim of Right—Discontinuance and Acquisition of Possession—Acts of Ownership—Injunction — Real Property Limitation Acts, 1833 and 1874 (3 & 4 Will. 4, c. 27, s. 3; 37 & 38 Vict. c. 57, s. 1).—A defendant in an action for an injunction and damages for trespass was the owner of land divided from the land of the plaintiffs by a wall belonging to the plaintiffs, and by a strip of land, on the defendant's side of

the wall, the ownership of which was in dispute. The defendant had tipped rubbish on his own land and also on the disputed strip up to and against the wall. There was evidence that the wall had been built in 1894 and 1895, and that the plaintiffs had since then made no further use of the strip except occasionally in repairing and altering their wall; and there was some evidence that the defendant or his tenant had grazed cows up to the wall. The defendant contended that the plaintiffs had discontinued possession and that the defendant had acquired a good title under the Real Property Limitation Acts, 1833 and 1874.

HELD—that the plaintiffs were entitled to succeed.

Observations on discontinuance and acquisition of possession under the Real Property Limitation Acts.

KYNOCH, LD. *v.* ROWLANDS, 55 Sol. Jo. 617—
[Joyce, J.]

AFFIRMED ON APPEAL—132 L. T. Jo. 59—C. A.

VIII. MORTGAGOR AND MORTGAGEE.

See also BUILDING SOCIETIES, No. 1.

5. Acknowledgment—Administration Action—Claim for Payment of Principal and Interest—Ireland—Real Property Limitation Acts, 1833 and 1874 (3 & 4 Will. 4, c. 27, ss. 2, 40; 37 & 38 Vict. c. 57, ss. 1, 8).—In Ireland, a claim by a legal mortgagee for payment of principal and interest due on his mortgage, brought in in a suit for the administration of the real and personal estate of a deceased owner of the equity of redemption, is a proceeding to recover money secured by a mortgage charged upon or payable out of the land within sect. 8 of the Real Property Limitation Act, 1874, and not an action or suit to recover the land within sect. 1 of that Act, and consequently the mortgagee in such case can rely upon an acknowledgment of his right given in writing by the agent of the owner of the equity of redemption, as keeping alive a mortgage debt, which would otherwise have become statute-barred.

IN RE LLOYD, WATERS *v.* LLOYD, [1911] 1 I. R.
[153; 45 I. L. T. 151—C. A., Ireland.]

IX. ACTIONS AGAINST EXECUTORS.

See No. 7, *infra*.

X. TRUSTEES.

See also BUILDING SOCIETIES, No. 1.

6. Trust—Payment to Wrong Beneficiary—Mistake of Fact—Right of Recovery—Lapse of Time—Limitation Act, 1623 (21 Jac. 1, c. 16).—An action brought in the Chancery Division by one *cestui que trust* against another *cestui que trust* to recover money wrongly paid by the trustee to the latter under a common mistake of fact is in the nature of a common law action for money had and received, and the Court, acting on the analogy of the Limitation Act, 1623, will hold the claim to be barred after the lapse of six years.

The case would be different if the claim were

X. Trustees—Continued.

made in an action in which the Court was administering the trust estate. There, if there were assets to which the overpaid *cestui que trust* was entitled, the Court would adjust the accounts as between the parties entitled, and lapse of time would be no bar.

Harris v. Harris ((1861) 29 Beav. 110) explained.

IN RE ROBINSON, MACLAREN v. PUBLIC TRUSTEE,
[1911] 1 Ch. 502; 80 L. J. Ch. 381; 104 L. T.
331; 55 Sol. Jo. 271—Warrington, J.

7. *Legal Personal Representative Assets Paid to Wrong Person Recovery by Person Entitled—Lapse of Time—Limitation Act, 1623* (21 Jac. 1, c. 16)—*Trustee Act, 1888* (51 & 52 Vict. c. 59), s. 8.]—A legal personal representative handed over assets to the wrong person more than six years before the commencement of proceedings by the person entitled to recover the same.

Held—that the claim was barred.

IN RE CROYDEN, HINCKS v. ROBERTS, 55 Sol.
[Jo. 632—Eve, J.

LIMITATION OF LIABILITY.

See ADMIRALTY; SHIPPING.

LIQUIDATED DAMAGE.

See DAMAGES.

LITERARY PROPERTY.

See COPYRIGHT AND LITERARY PROPERTY.

LITERARY SOCIETIES.

See SCIENTIFIC AND LITERARY SOCIETIES.

LIVERPOOL COURT OF PASSAGE.

See COURTS.

LLOYD'S.

See INSURANCE.

LOCAL AUTHORITIES.

See LOCAL GOVERNMENT; NEGLIGENCE;
PUBLIC HEALTH.

LOCAL GOVERNMENT.

COL.

I. IN GENERAL.

- (a) Accounts and Audit . . . 330
- (b) Areas and Boundaries . . . 332
- (c) Burials . . . 333

[No paragraphs in this vol. of the Digest.]

- (d) Bye-laws (other than Building Bye-laws) and Local Acts . . . 333
- (e) Contracts . . . 334
- (f) Meetings . . . 335
- (g) Members, Officers, and Servants.
 - (a) *In General* . . . 336
 - (b) *Disqualifications* . . . 337
- (h) Powers . . . 338
- (i) Practice . . . 338
- (j) Tort . . . 338

II. BUILDINGS AND BUILDING BYE-LAWS.

- (a) Building Line . . . 338
- [No paragraphs in this vol. of the Digest.]
- (b) Continuing Offence . . . 339
- [No paragraphs in this vol. of the Digest.]
- (c) Crown . . . 339
- [No paragraphs in this vol. of the Digest.]
- (d) Deposit and Approval of Plans . . . 339
- (e) Exemptions and Dispensations . . . 339
- [No paragraphs in this vol. of the Digest.]
- (f) Miscellaneous Bye-laws . . . 339
- (g) Notice . . . 340
- (h) *Res judicata* . . . 340
- [No paragraphs in this vol. of the Digest.]

- (i) Remedies for Breach . . . 340
- [No paragraphs in this vol. of the Digest.]

- (j) Waterworks . . . 340
- [No paragraphs in this vol. of the Digest.]

- (k) Words: "New Buildings," "Building," "Sign," "Letting," etc. . . 340
- [No paragraphs in this vol. of the Digest.]

- (l) Housing and Town Planning Act, 1909 . . . 340

III. MISCELLANEOUS . . . 340

For PRIVATE STREET WORKS, see HIGHWAYS, STREETS, AND BRIDGES, XII.

See also ELECTRIC LIGHTING, No. 3; FOOD AND DRUGS; HIGHWAYS, Nos. 4, 6; INCOME TAX, No. 14; MAGISTRATES, No. 14; METROPOLIS; NEGLIGENCE, No. 1 and V.; STREET TRAFFIC, No. 12; TIME, No. 1; WATERS, No. 5.

I. IN GENERAL.

- (a) Accounts and Audit.

See also No. 18, *infra*; INCOME TAX, No. 1; INSURANCE, No. 4.

1. *Borrowing Powers—Overdraft—Power to Borrow for Specific Purposes—General Overdraft—Interest—Power to Use Consolidated Loans Fund for Fresh Loans—Ultra vires—Local Government—Municipal Corporation—Urban Authority.*—The defendant corporation had statutory powers to borrow money with the sanction of the Local Government Board for the

1. In General—Continued.

purposes of several undertakings which they were authorised to carry on, including the supply of electricity and electrical fittings and the construction and working of electric tramways. The corporation in 1905 applied to their bank for and obtained leave to overdraw their general account to the extent of £120,000 for six months. The overdraft was allowed on the security of their unexhausted borrowing powers. At this time they had applied for but not yet obtained the sanction of the Local Government Board to a large loan for the purposes of their electricity undertaking. This sanction was afterwards obtained. The overdraft was renewed from time to time for different amounts. At the commencement of this action the limit stood at £50,000, and before the hearing the overdraft was paid off altogether. The moneys received from the overdraft were paid into the corporation's general account and applied for the purposes of all their undertakings indiscriminately:—

HELD—that this borrowing by way of overdraft was illegal.

The corporation were bound by their private Acts to pay every year into an account called the consolidated loans fund sufficient moneys to provide for the interest and instalments of principal to be repaid in respect of all their loans, which were raised by the issue of stock. But they had power when a fresh loan was authorised to borrow from the consolidated loans fund instead of issuing fresh stock. They applied the whole of the consolidated loans fund in reducing their overdraft in anticipation of the assent of the Local Government Board to fresh loans.

HELD—that this application of the consolidated loans fund was illegal.

ATTORNEY-GENERAL *v.* WEST HAM CORPORATION, [1910] 2 Ch. 560; 80 L. J. Ch. 105; 103 L. T. 394; 74 J. P. 406; 26 T. L. R. 683; 9 L. G. R. 433—Neville, J.

2. Borrowing Powers—Loan by Bank on Security of Rates—No Mortgage—Interest—Surcharge—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 233.—In 1900 a local authority, under the sanction of the Local Government Board, borrowed £600 from a bank, to be repaid with interest within ten years, mortgaging a proportion of the rates as security. In 1902, arrangements having been made for the transfer of the corporation account to another bank, the latter bank paid off the £600 due to the first bank, and thus became creditors of the local authority for that amount. The bank also agreed to finance the local authority up to £500,000, and the local authority agreed, if called upon, to issue stock. The mortgage given to the first bank was not transferred to the second bank, nor was any mortgage or other document securing the second bank executed in its favour by the local authority. The payment of interest to the second bank on the £600 was disallowed by the auditor on the ground that no proper security had been given by the local authority, as prescribed by sect. 233 of the Public Health Act, 1875.

HELD—that it being the intention of the

parties that there should be a transfer of the £600 loan and of the mortgage securing it from the first to the second bank, there had, in fact, been no new borrowing on the part of the corporation, and that there had been a sanction for the old loan and a security for the same, and therefore that the auditor was not right in disallowing the payment of interest thereon.

Quere, whether the borrowing powers conferred upon an urban authority by sect. 233 of the Public Health Act, 1875, enable it to borrow or reborrow money (for other than temporary purposes) without securing the repayment of the loan by a mortgage of the rates or fund on the credit of which the money is borrowed.

Decision of Div. Ct. ([1910] 2 K. B. 201; 79 L. J. K. B. 659; 102 L. T. 598; 74 J. P. 238; 26 T. L. R. 486; 8 L. G. R. 588) reversed on a further agreed statement of facts.

R. v. Locke, [1911] 1 K. B. 680; 80 L. J. K. B. [358; 103 L. T. 790; 75 J. P. 145; 27 T. L. R. 178; 55 Sol. Jo. 139; 9 L. G. R. 103—C. A.

3. Coronation Festivities—Previous Sanction of Local Government Board—Proposed Rate to Levy Expenses of Festivities—Application for Interim Injunction—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 207, 209, 210, 247—Local Authorities (Expenses) Act, 1887 (50 & 51 Vict. c. 72), s. 3—Local Government Order, April 18th, 1911.—In April, 1911, the Local Government Board, in pursuance of their statutory powers, issued a general order to all local authorities whereby they sanctioned beforehand “any reasonable expenses” that might be incurred by any local authority in connection with any local public celebration on the occasion of the King's coronation; and on May 2nd the defendant council passed a resolution that a sum not exceeding three farthings in the pound should be expended out of the rates in carrying out the coronation festivities in the district. The three farthings rate would produce about £240. The Attorney-General, at the relation of certain ratepayers, brought an action against the local authority to restrain them from paying the £240 out of the rates on the ground that such payment would be *ultra vires* and illegal, and applied for an interim injunction pending the trial of the action.

HELD—that it was not a case for an interlocutory injunction.

Attorney-General v. Merthyr Tydfil Union ([1900] 1 Ch. 516) applied.

ATTORNEY-GENERAL *v.* EAST BARNET VALLEY URBAN DISTRICT COUNCIL, 75 J. P. 484; 9 L. G. R. 913—Neville, J.

(b) Areas and Boundaries.

4. Unlicensed Pleasure Boat—Boundaries of District—Jurisdiction of Sanitary Authority over the Seashore—Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 94.—F., who resided outside the urban district of W., brought his boat to W. and touted for passengers on the shore to go for a sail. Certain persons got into the boat from the beach.

I. In General—Continued.

HELD—that there was evidence that F. was plying for hire; that the nature of a pleasure boat should be ascertained by the use of the boat; and that, although no express evidence was given as to whether the boundaries of the urban district extended below the medium high water mark, the magistrates were justified in convicting the defendant for carrying passengers for hire without a licence contrary to sect. 94 of the Public Health Acts Amendment Act, 1907.

FEARON v. WARRENPOINT URBAN DISTRICT COUNCIL, 44 I. L. T. 265—Div. Ct., Ireland.

(c) Burials.

[No paragraphs in this vol. of the Digest.]

(d) Bye-laws (other than Building Bye-laws) and Local Acts.

See also **STREET TRAFFIC**, No. 12.

5. Indecent Language—Annoyance of Passengers—Street or Public Place—Public-house.—A bye-law forbidding the use of profane, obscene, or indecent language in any street or public place to the annoyance of passengers cannot be held to apply to language alleged to be indecent used in a public-house and only heard by persons present therein.

RUSSON v. DUTTON (No. 2), 104 L. T. 601; 75 [J. P. 209; 9 L. G. R. 558; *sub nom.* **RUSSON v. DUTTON** (No. 1)], 27 T. L. R. 197—Div. Ct.

6. Foreshore—Delivering Address—Place not Appointed for the Purpose—Bye-law—Approval by Local Government Board—Hastings Improvement Act, 1885 (48 & 49 Vict. c. xcvi.), s. 198.—By sect. 198 of the Hastings Improvement Act, 1885, the corporation obtained power to make bye-laws "for the preservation of order and good conduct among persons frequenting the parades, stade, foreshore, and sands."

Under the above section the corporation of Hastings made a bye-law, which was approved by the Local Government Board, that no person should deliver an address on any part of the parades, stade, foreshore or sands, except on such portions thereof as the corporation might by notice appoint for the purpose, and the corporation by notice from time to time appointed certain portions of the stade as places at which addresses might be delivered, but these notices were not submitted to the Local Government Board for approval. The appellant, who was a member of the Salvation Army, conducted a religious service and delivered an address on a portion of the stade which was not one of the places so appointed, and he was convicted of contravening the bye-law.

HELD—that as the power to fix the places at which addresses might be delivered was set out in the bye-law it was not necessary to submit the notices to the Local Government Board for approval, and that the bye-law was valid, and therefore the conviction must be affirmed.

SLEE v. MEADOWS, 105 L. T. 127; 75 J. P. [246; 9 L. G. R. 517—Div. Ct.

7. Touting for Hackney Carriage in Public Thoroughfare—Bye-law—Private Land at Street Corner.—The respondent was summoned for touting for a hackney carriage in a public thoroughfare contrary to a bye-law which provided: "A person shall not in any public thoroughfare in the district tout for a hackney carriage." The facts were that the respondent stood on a triangular piece of land at a street corner touting for hackney carriages, having received permission from the freeholders of the piece of land to stand on it for the purpose of his business. The land where the respondent stood was always open for the public to pass over, and the street (including the piece of land) had been declared a public highway.

HELD—that the fact that the piece of land on which the respondent stood belonged to private persons did not prevent his act from being an offence against the bye-law.

DERHAM v. STRICKLAND, 104 L. T. 820; 75 [J. P. 300; 9 L. G. R. 528—Div. Ct.

(e) Contracts.

See also **ARBITRATION**, Nos. 4, 5; **BUILDING CONTRACTS**, No. 1.

8. Employment of Architect—No Contract under Seal—Dismissal of Architect before Work Completed—Right to Recover on quantum meruit—Practice—Particulars of Damage—Verdict for larger Amount.—At a meeting of the defendant council it was verbally resolved that the plaintiff should be employed as joint architect for the erection of a kuraal which the defendants were authorised under a private Act to erect. There was no contract under seal. The plaintiff prepared plans, and for some time did work in pursuance of the resolution, but before the work was finished he was dismissed. In an action for damages for breach of contract, and, alternatively, on a *quantum meruit*, the jury awarded damages on the *quantum meruit* in excess of the amount claimed by the plaintiff in his particulars.

HELD—(1), following *Lawford v. Billericay Rural District Council* ([1903] 1 K. B. 772), that the defendant council, having received the benefit of the work, were liable to the plaintiff on a *quantum meruit*; but (2) that it was not competent to the jury to award damages in excess of the amount claimed by the particulars in the absence of any evidence by the plaintiff that the amount claimed by him was inadequate.

HODGE v. MATLOCK BATH AND SCARTHIN NICK [URBAN DISTRICT COUNCIL AND NUTTALL, 75 J. P. 65; 27 T. L. R. 129; 8 L. G. R. 1127—C. A.

9. Seal—"Value or Amount" exceeding £50—Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 201 (1).—The "value or amount" of a contract within the meaning of the Public Health (Ireland) Act, 1878, sect. 201, sub-sect. 1, which enacts that "every contract made by a sanitary authority whereof the value or amount exceeds £50 shall be in writing, and sealed with the common seal of such authority,"

I. In General—Continued.

is the amount which, in the light of the facts within the contemplation of the parties, and in reference to which the contract is made, would be recoverable by the contractor from the sanitary authority on completion.

MUNRO v. MALLOW URBAN DISTRICT COUNCIL, [1911] 2 I. R. 130—Div. Ct., Ireland.

10. *Hospital—Joint User by Several Local Authorities—Establishment Expenses Apportioned—Judgment for Arrears of Expenses—Writ Issued more than Six Months after Arrears Accrued Due—Excusable Delay—Mandamus to Levy a Rate—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 210, 230—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 68.*—Three deeds entered into between the plaintiffs and the defendants or their predecessors in title contained an arrangement with reference to the building and management of a hospital. Under the arrangement an estimate of the maintenance expenses was made up in advance on March 31st in each year, and the various authorities from time to time duly paid their respective proportions, but on April 11th, 1906, the defendants served on the plaintiffs a notice purporting to determine the three deeds and their liability thereunder as from October 11th, 1906, and from that date ceased to use the hospital and declined to pay any portion of the establishment expenses. The plaintiffs alleged that the notice was invalid, and after long negotiations commenced this action in December, 1909.

HELD—that the notice was invalid, and that the first and third deeds were valid and still subsisting; that the judgment in the action was itself a charge within the meaning of sect. 210 of the Public Health Act, 1875; and that, as under the circumstances there had been excusable delay in bringing the action, the plaintiffs were entitled to judgment for the arrears due from the defendants and to a *mandamus* commanding the defendants to levy a rate to satisfy the amount of the judgment.

WOLSTANTON UNITED URBAN DISTRICT COUNCIL v. TUNSTALL URBAN DISTRICT COUNCIL, [1910] 2 Ch. 347; 79 L. J. Ch. 522; 103 L. T. 98; 74 J. P. 353; 8 L. G. R. 870—Neville, J.

On appeal, order varied by consent ([1911] 1 Ch. 229; 80 L. J. Ch. 418; 103 L. T. 473; 75 J. P. 203; 9 L. G. R. 557—C. A.).

(f) Meetings.

11. *Urban District Council—Newly-elected Council—Election of Chairman—Right of Former Chairman to Preside and Give Casting Vote—Public Health Act, 1875 (38 & 39 Vict. c. 55), Sched. I, 1 (3).*—The right to act as a chairman of a district council meeting depends upon membership of the council. Therefore, the chairman of a retiring council ceases to be chairman of the council when it goes out of office, and cannot act as chairman of the newly-elected council in virtue of his former office unless he is

duly elected chairman by the members of the new council.

R. v. ROWLANDS, EX PARTE BEESLEY, [1910] 2 K. B. 930; 80 L. J. K. B. 123; 103 L. T. 311; 74 J. P. 453; 26 T. L. R. 658; 54 Sol. Jo. 750; 8 L. G. R. 923—Div. Ct.

12. *Election of Lord Mayor—Majority of the Members Present—Members Present but not Voting—Municipal Corporations (Ireland) Act, 1840 (3 & 4 Vict. c. 108), ss. 83, 92.*—At an election under the Municipal Corporations (Ireland) Act, 1840, all acts and questions may be done and decided by the majority of the members who shall be present at the meeting held in pursuance of the Act.

HELD—that the majority must be a majority of the total members present, whether voting or not, and that where forty-nine members of a council were present and twenty-two voted for one candidate for office, and twenty-one voted for another candidate, and six abstained from voting, there was not a sufficient majority to entitle the candidate who had got twenty-two votes to hold office.

R. (SISK) v. DONOVAN, 45 I. L. T. 24—C. A., [Ireland].

(g) Members, Officers and Servants.

See also LIBEL AND SLANDER, No. 5; POOR LAW, No. 5.

(a) In General.

13. *Borough Council—Member of Committee—"Office"—Power to Resign.*—A councillor who has been appointed a member of committee of a municipal corporation is not as such the holder of a "public office" at common law, and he may therefore competently resign his membership of the committee.

R. v. SUNDERLAND CORPORATION, [1911] 2 [K. B. 458; 80 L. J. K. B. 1337; 105 L. T. 27; 9 L. G. R. 928; *sub nom.* R. v. SUNDERLAND CORPORATION, EX PARTE CRAWFORD, 75 J. P. 365; 27 T. L. R. 385—Div. Ct.

14. *Vestry Clerk—Duties—Lists of Voters—Owners' Return—Verification—Salary—Mandamus—Vestries Act, 1850 (13 & 14 Vict. c. 57), ss. 7, 8.*—Although the preparation of the parliamentary, county, and parochial lists is part of the duty of the vestry clerk, yet he is not bound at his own expense or as part of his duty to carry out the independent verification of the owners' returns.

Where the overseers have refused to pay the vestry clerk on demand his salary, chargeable on the poor rate under sect. 8 of the Vestries Act, 1850, and directed to be paid by an order of the Local Government Board, the vestry clerk's proper remedy is by way of *mandamus* to the overseers to pay the salary.

R. v. DAVIES, [1911] 2 K. B. 669; *sub nom.* [R. v. DAVIES, EX PARTE PEAKE, 80 L. J. K. B. 993; 104 L. T. 778; 75 J. P. 265; 9 L. G. R. 564—Div. Ct.

I. In General—Continued.**(b) Disqualification.**

15. Urban District Councillor—Disqualification—Joint Hospital Committee for Two Districts—Clerk of Committee—Paid Office under Council—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46.]—By an agreement between the corporation of a borough and the council of an urban district a joint committee was formed for the purpose of providing hospitals for the use of the inhabitants of the borough and district jointly, half the committee being appointed by the corporation and half by the district council. The appellant was appointed by the committee as their salaried clerk, and was paid his salary by them out of funds which were in part derived from contributions by the corporation and the district council respectively.

HELD—that the appellant was the holder of “a paid office under the district council” within the meaning of sect. 46 of the Local Government Act, 1894, and consequently was disqualified from being a member of that council, none the less because the corporation joined in his appointment and in the payment of his salary.

GREVILLE-SMITH v. TOMLIN, [1911] 2 K. B. 9; [80 L. J. K. B. 774; 104 L. T. 816; 75 J. P. 314; 9 L. G. R. 598—Div. Ct.

16. Guardians and District Councillors—Absence—Illness—Notice—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46 (6), (7).]—If a guardian or district councillor is absent from meetings of the board or council for more than six months consecutively through illness, it is not necessary for him to give notice of his illness to the board or council in order that he may not be disqualified under sect. 46 (6) of the Local Government Act, 1894.

Semble, that if his absence is not due to illness he is disqualified from acting, at all events until his excuse has been considered and accepted by the board or council, and he cannot by merely resuming attendance afterwards do away with the disqualification.

R. v. HUNTON, EX PARTE HODGSON, 75 J. P. [335; 9 L. G. R. 751—Div. Ct.

17. Election—Councillor—Alderman—Mayor—Interest in Contract—Disqualification—“Being a Councillor”—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 12, 14, 15, 73.]—The Municipal Corporations Act, 1882, sect. 14, sub-sect. 3, provides that “a person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor”; and by sect. 15, sub-sect. 1, “the mayor shall be a fit person selected by the council from among the aldermen or councillors or persons qualified to be such.” By sect. 12, sub-sect. 1, “a person shall be disqualified for being elected and for being a councillor if and while he . . . (c) has . . . any interest in any contract . . . with . . . the council.”

The respondent, who had been a member of the council of a borough since before 1897, was on November 1, 1909, re-elected a councillor. The respondent was at that date, and continued to be until January 3, 1911, interested in a contract with the council of the borough. On November 9, 1910, the respondent was elected alderman and mayor of the borough.

HELD—that as the respondent's election as councillor on November 1, 1909, had not been called in question within twelve months after the election, it must under sect. 73 of the Act be deemed to have been a good and valid election; that his continued interest in the contract did not *ipso facto* vacate his office of councillor, though it rendered him liable to penalties under sect. 41 and possibly to be ousted by a writ of *quo warranto*; that the respondent was therefore a councillor at the date of his election as alderman and mayor and was not disqualified from election to those offices.

FORRESTER v. NORTON, [1911] 2 K. B. 953; [80 L. J. K. B. 1288; 105 L. T. 375; 75 J. P. 510; 27 T. L. R. 542; 55 Sol. Jo. 668; 9 L. G. R. 991—Div. Ct.

(h) Powers.

See No. 1, *supra*; **ELECTRIC LIGHTING**, No. 1.

(i) Practice.

18. Documents in Possession of Council—Right of Ratepayer to Inspect—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 58.]—The right given by sect. 58 of the Local Government Act, 1894, to a parochial elector to inspect and take copies from books, accounts, and documents belonging to or under the control of the local authority is only a right given to him in his capacity of a ratepayer; therefore where a parochial elector sought inspection of cases submitted by the local authority for the opinion of counsel and counsel's opinions thereon, in connection with a dispute and threatened litigation between him and the local authority as to the repair of a certain highway:—

HELD—that the cases and opinions were “documents” within the meaning of the section, but that under the circumstances and in the exercise of its discretion the Court would not enforce the parochial elector's right of inspection by *mandamus*.

R. v. GODSTONE RURAL DISTRICT COUNCIL, [1911] 2 K. B. 465; 80 L. J. K. B. 1184; 105 L. T. 207; 75 J. P. 413; 27 T. L. R. 424; 9 L. G. R. 665—Div. Ct.

(j) Tort.

See **NEGLIGENCE**, V.

II. BUILDINGS AND BUILDING BYE-LAWS.

See also **HIGHWAYS**, No. 18.

(a) Building Line.

[No paragraphs in this vol. of the Digest.]

11. Buildings and Building Bye-laws—Continued.

(b) Continuing Offence.

[No paragraphs in this vol. of the Digest.]

(c) Crown.

[No paragraphs in this vol. of the Digest.]

(d) Deposit and Approval of Plans.

19. *New Building Plan in Accordance with Bye-laws—General Objection—Right to Refuse Approval*—*Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 25.]—A builder submitted to an urban sanitary authority a plan for a cottage on a beach site, the plan showing a proposal to construct a drain and a cesspool for the purpose of dealing with the sink water. The plan was in accordance with the bye-laws. The surveyor to the sanitary authority advised them that as the whole of the drainage system was below the level of ordinary spring tides the cesspool would at such times become filled with sea water and the drainage system would be rendered in-operative. The sanitary authority consequently disapproved the plan, on the ground that the plan would provide no effectual drainage and that no satisfactory system of drainage had been submitted.

HELD—that the sanitary authority had no right to refuse their approval to the plan because of a general objection outside the merits of the plan itself.

R. v. BENHILL CORPORATION, EX PARTE
[CORNELL, 75 J. P. 385; 9 L. G. R. 641—
Div. Ct.]

(e) Exemptions and Dispensations.

[No paragraphs in this vol. of the Digest.]

(f) Miscellaneous Bye-laws.

20. *Height of Rooms—Scullery—Room Constructed so that it may be Used for Human Habitation.*]—The respondents were summoned for infringement of a bye-law that "every person who shall erect a new building, and shall construct any room therein so that it may be used for human habitation . . . if such room is not intended to be used as a sleeping-room . . . shall construct such room so that it shall be not less in any part thereof than 9ft. in height." It was proved that the respondents constructed three cottages, each of which contained a scullery which was only 8 ft. 3 in. in height. The sculleries contained only a slopstone and stone bench and no fireplace or flue, and they were not of sufficient size for taking meals or sleeping. The justices found that the sculleries were not rooms which might be used for human habitation.

HELD—that as there was no rule of law that the magistrates must find that the sculleries, being without fireplaces, were constructed so that they might be used for human habitation, their decision was right.

BAIN v. COMPSTALL CO-OPERATIVE SOCIETY, 103
[L. T. 759; 75 J. P. 76; 9 L. G. R. 75—
Div. Ct.]

(g) Notice.

See PUBLIC HEALTH, No. 1.

(h) Res Judicata.

[No paragraphs in this vol. of the Digest.]

(i) Remedies for Breach.

[No paragraphs in this vol. of the Digest.]

(j) Waterworks.

[No paragraphs in this vol. of the Digest.]

(k) Words: "New Buildings," "Building," "Sign," "Letting," etc.

[No paragraphs in this vol. of the Digest.]

(1) Housing and Town Planning Act, 1909.

21. *Insanitary Dwellings—Closing Order—Statutory Form—Omission of Note to Form—Injunction—Local Government Order, January 11, 1910, Form 5—Housing, Town Planning, etc., Act, 1909* (9 Edw. 7, c. 44), ss. 17, 39, 41.]—A local authority in exercise of their powers under sect. 17, sub-sect. 2, of the Housing, Town Planning, etc., Act, 1909, served a closing order upon the owner of a dwelling-house in their district on the ground that it was in a state so dangerous or injurious to health as to be unfit for human habitation. The closing order followed the statutory form prescribed by an Order of the Local Government Board made under sect. 41 of the Act, except that it omitted the "note" at the foot of the form setting out sect. 17, sub-sect. 3, of the Act, which gives an owner served with such an order the right of appeal to the Board within fourteen days after the service of the order upon him:—

HELD—that the "note" was a material part of the statutory form, and that its omission rendered the proceedings of the local authority invalid.

An injunction was accordingly granted restraining the local authority from proceeding to enforce the closing order.

RAYNER v. STEPNEY CORPORATION, [1911] 2 Ch.
[312; 80 L. J. Ch. 678; 105 L. T. 362;
75 J. P. 468; 27 T. L. R. 512—Neville, J.]

III. MISCELLANEOUS.

22. *Old Age Pensions—Statutory Conditions—Attainment of Seventy Years of Age—Pension Allowed by Local Pension Committee—No Appeal—Final and Conclusive—Re-investigation—Old Age Pensions Act, 1908* (8 Edw. 7, c. 40), ss. 1, 2, 7, 9.]—If a person is not seventy when the Old Age Pensions Act, 1908, is applied the jurisdiction upon which the procedure depends is taken away. The statutory conditions (the leading one of which is that the age of seventy must be attained) apply to the receipt, as well as to the granting, of a pension, and a question as to the fulfilment or the continuance of the fulfilment of these conditions may be raised at any time.

A person had been allowed an old age pension by the local pension committee on the basis that she was seventy years of age, and no appeal was brought within the prescribed time against

III. Miscellaneous—Continued.

that decision. Upon a question subsequently raised by the pension officer to the effect that the person had not fulfilled the statutory conditions, inasmuch as she had not attained the age of seventy, the Local Government Board, on appeal, decided that she was not entitled to receive any pension.

HELD—that they had jurisdiction to enter upon the re-investigation, notwithstanding the words of sect. 7, sub-sect. 2, of the Act that the decision of a committee, if unappealed from, shall be “final and conclusive.”

Decision of C. A., Ireland ([1911] 2 I. R. 88 ; 45 I. L. T. 21), affirmed.

MURPHY v. R., [1911] A. C. 401 ; 80 L. J. P. C. [121 ; 104 L. T. 788 ; 75 J. P. 417 ; 27 T. L. R. 453 ; 55 Sol. Jo. 518 ; 9 L. G. R. 675 ; [1911] 2 I. R. 578 ; 45 I. L. T. 161—H. L. (I.).

23. *Old Age Pensions—Appeal to Local Government Board—Notice of Appeal Being Taken—Right to be Heard—Old Age Pensions Act, 1908* (8 Edw. 7, c. 40).]—The Local Government Board is bound to notify an applicant for an old age pension of the fact that an appeal has been taken from the local pension committee, which had awarded a pension, but the Local Government Board is not bound to give any notice of the time or place of hearing such appeal, and it is entirely within the discretion of the Board to allow the applicant to give evidence at the hearing of the appeal if he has expressed beforehand his wish to do so.

How far the principle of *res judicata* applies to applications under the Old Age Pensions Act, 1908, considered.

R. (CAIRNS) v. LOCAL GOVERNMENT BOARD [(IRELAND) AND COUNTY TYRONE LOCAL PENSION COMMITTEE, [1911] 2 I. R. 331 ; 45 I. L. T. 46—Div. Ct., Ireland.

LOCOMOTIVES.

See HIGHWAYS ; RAILWAYS AND CANALS ; STREET TRAFFIC.

LODGING HOUSES.

See LANDLORD AND TENANT ; PUBLIC HEALTH.

LONDON.

See METROPOLIS.

LONDON BUILDING ACT.

See METROPOLIS.

LONDON, PORT OF.

See WATERS AND WATERCOURSES ; SHIPPING AND NAVIGATION.

LOTTERIES.

See GAMING AND WAGERING.

LUNATICS AND PERSONS OF UNSOUND MIND.

	COL.
I. SUMMARY RECEPTION ORDER	342
[No paragraphs in this vol. of the Digest.]	
II. PRACTICE	342
III. COMMITTEE AND RECEIVER	343
IV. VESTING ORDER	343
[No paragraphs in this vol. of the Digest.]	
V. PROPERTY AND CAPACITY OF LUNATIC	343
VI. MAINTENANCE	343
[No paragraphs in this vol. of the Digest.]	
VII. CREDITORS	343
[No paragraphs in this vol. of the Digest.]	
VIII. CONTRACTS	343
[No paragraphs in this vol. of the Digest.]	
IX. PAUPER LUNATICS	343
X. FOREIGN LUNATICS	343
[No paragraphs in this vol. of the Digest.]	

I. SUMMARY RECEPTION ORDER.

[No paragraphs in this vol. of the Digest.]

II. PRACTICE.

See also PRACTICE, No. 14.

1. *Committee of Estate—Application by Person Found Incapable of Managing his Affairs to Attend Proceedings—Application by Wife—Rules in Lunacy, r. 39.*]—In 1906 Lord T. was found to be a person incapable of managing his affairs, but capable of managing himself. A committee of the estate was appointed, and the person who in default of issue male to Lord T. was the next heir to the title and also tenant for life in remainder of the settled estates was given liberty to attend generally upon the proceedings. Since the management of the estate was taken over by the committee the income received by Lord T. had increased from a nominal sum to about £800 per annum. In 1911 Lord T. and his wife applied that they or one of them might be at liberty to attend the future proceedings in the matter generally at the expense of the estate.

HELD—that the application must be refused. IN RE MARQUESS TOWNSHEND, [1911] W. N. [199 ; 28 T. L. R. 12—C. A.

III. COMMITTEE AND RECEIVER.

See No. 1, *supra*.

IV. VESTING ORDER.

[No paragraphs in this vol. of the Digest.]

V. PROPERTY AND CAPACITY OF LUNATIC.

See also No. 1, *supra*; PRACTICE, No. 14.

2. *Specific Legacy—Testator becoming Lunatic—Sale under Order in Lunacy—Ademption—Recovery of Sanity Shortly before Death—Lunacy Act, 1890 (53 Vict. c. 5), s. 123.*—Under sect. 123 of the Lunacy Act, 1890, a specific legacy in a will made by a person who afterwards becomes a lunatic but recovers his sanity shortly before death, is not adeemed by a sale of the subject-matter of the legacy under an order made under the Act, if there is no evidence that he, on recovering his sanity, elected to take his property into his own possession and management.

IN RE PALMER, THOMAS v. MARSH, [1911] W. N. [171; 131 L. T. Jo. 269; 46 L. J. N. C. 534—Neville, J.]

VI. MAINTENANCE.

[No paragraphs in this vol. of the Digest.]

VII. CREDITORS.

[No paragraphs in this vol. of the Digest.]

VIII. CONTRACTS.

[No paragraphs in this vol. of the Digest.]

IX. PAUPER LUNATICS.

See POOR LAW, No. 2.

X. FOREIGN LUNATICS.

[No paragraphs in this vol. of the Digest.]

MACHINERY.

See FACTORIES AND WORKSHOPS; NEGLIGENCE; PATENTS; RATES AND RATING.

MAGISTRATES.

	COL.
I. DISQUALIFICATION OF JUSTICES	343
II. JURISDICTION AND POWERS OF JUSTICES	344
III. PROCEDURE	348
IV. APPEALS.	
(a) To Quarter Sessions	351
(b) By Special Case	352
V. ACTIONS AGAINST MAGISTRATES	353

I. DISQUALIFICATION OF JUSTICES.

1. *Bias—Adjudicating Magistrate a Witness—Materiality of Evidence.*—At the hearing of a

summons for assault, one of the presiding justices, K., had been summoned and was called as a witness for the complainant. He was sworn, but as he knew nothing about the case, he was unable to give evidence material to the issue. He then resumed his seat on the bench without objection. The justices unanimously convicted the defendant.

HELD—that as K.'s evidence was not material to the case he was not disqualified from adjudicating, and the conviction must stand.

R. (DONELLY) v. JUSTICES OF COUNTY TYRONE, [45 I. L. T. 264—Div. Ct., Ireland.]

2. *Bias—Speech at Political Meeting—Magistrate not Showing Cause—Costs.*—G., a member of Parliament and justice of the peace, stated in a speech that O. (a political opponent) had been "organising for weeks" a disturbance in which M., a supporter of G., was alleged to have been assaulted by O. O. was afterwards convicted on a summons for assault at the suit of M. heard by magistrates of whom G. was one.

HELD—that there was sufficient evidence of bias to vitiate the conviction, and that the Court had jurisdiction to make G., who was not showing cause, pay the costs.

R. (O'LEARY) v. JUSTICES OF COUNTY CORK, 45 [I. L. T. 3—Div. Ct., Ireland.]

II. JURISDICTION AND POWERS OF JUSTICES.

See also ANIMALS, No. 1; CRIMINAL LAW, No. 75; FRIENDLY SOCIETIES, No. 2; HUSBAND AND WIFE, No. 38; RATES, No. 14; STREET TRAFFIC, No. 2.

3. *Consent of Defendant to be tried Summarily—Evidence given by Defendant and his Witnesses—Subsequent Committal—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 12, 24, 27—No Statutory Caution—Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 18—Indictment at Quarter Sessions—True Bill—Jurisdiction of Quarter Sessions.*—The power of a court of summary jurisdiction under sect. 12 of the Summary Jurisdiction Act, 1879, to commit a person charged for trial may be exercised at any stage of the proceedings up to adjudication, notwithstanding that at an earlier stage the defendant has consented to the case being dealt with summarily and the hearing has proceeded on that basis to the close of the evidence for the defence.

A defendant charged with larceny before a court of summary jurisdiction, having consented to the case being dealt with summarily, gave evidence without being cautioned as directed by sect. 18 of the Indictable Offences Act, 1848, and called witnesses. At the close of the evidence, the justices were of opinion that it was not expedient to deal summarily with the case, and committed the defendant without his consent for trial at quarter sessions, where an indictment was preferred on which the grand jury returned a true bill. The court of quarter sessions, on account of

II. Jurisdiction and Powers of Justices—Continued.

what had taken place before the court of summary jurisdiction, declined to proceed with the trial of the indictment.

HELD—that the absence of the statutory caution could not be treated as more than a mere irregularity and that the jurisdiction of quarter sessions to try the indictment was not ousted by any such irregularity in the proceedings before the court of summary jurisdiction.

R. v. HERTFORDSHIRE JUSTICES, [1911] 1 K. B. [612; 80 L. J. K. B. 437; 104 L. T. 312; 75 J. P. 91; 27 T. L. R. 156; 22 Cox, C. C.—Div. Ct.]

4. *Ouster of Jurisdiction*—*Bona fide Claim of Right*—*Right possible in Law*—*Public Highway along Railway*—*Dedication by Railway Company*—*Trespass*—*Great Western Railway (No. 1) Act, 1882 (45 & 46 Vict. c. cxciv.), s. 38—Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 23.*—In answer to an information charging the defendant before two justices of the peace under sect. 38 of the Great Western Railway (No. 1) Act, 1882, with trespassing on a railway in such manner as to expose himself to danger, the defendant alleged that he was lawfully upon the railway in exercise of a right which he claimed as one of the public to pass and repass along the railway as upon a highway dedicated before the passing of the Regulation of Railways Act, 1868, by the railway company or by another railway company with which it had been amalgamated:—

HELD—that the jurisdiction of the justices was ousted, for that a railway company, like any other statutory body, may dedicate a highway over land vested in it by statute, provided that the dedication is not incompatible with the objects prescribed by the statute.

R. v. Leake ((1833) 5 B. & Ad. 469) and *Grand Junction Canal Co. v. Petty* ((1888) 21 Q. B. D. 273) followed.

HELD, ALSO—that the question whether such a dedication is compatible with those objects is not a question to be tried by justices in petty sessions.

HELD, ALSO—that the question, whether a highway dedicated by a railway company before the passing of the Regulation of Railways Act, 1868, had been extinguished by sect. 23 of that Act, was not a question for the justices; and that, if it were, it ought to be answered in the negative.

Cole v. Miles ((1888) 57 L. J. M. C. 132) followed.

ARNOLD v. MORGAN, [1911] 2 K. B. 314; 80 [L. J. K. B. 955; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917—Div. Ct.]

5. *Power to Impose Consecutive Sentences*—*Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 25.*—A defendant was charged before justices in petty sessions with six distinct charges of obtaining money by false pretences, and to each charge he pleaded guilty.

Thereupon the justices sentenced him to six months' imprisonment on the first charge, to six months' on the second, and to three months' on each of the other four charges, all being consecutive.

HELD—that under sect. 25 of the Summary Jurisdiction Act, 1848, the justices could only impose two consecutive sentences, and, therefore, that the four sentences of three months each imposed upon the defendant in respect of the third, fourth, fifth, and sixth charges were illegal, and must be quashed.

R. v. Cutbush ((1867) L. R. 2 Q. B. 379) discussed.

R. v. MARTIN, EX PARTE SMYTHE, [1911] 2 [K. B. 450; 80 L. J. K. B. 876; 105 L. T. 220; 75 J. P. 425; 27 T. L. R. 460—Div. Ct.]

6. *Absence of Defendant*—*Appearance by Solicitor*—*Plea of Guilty*—*Admission of Previous Conviction*—*Warrant of Arrest*—*Power to Issue*—*Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 13, 14.*—The defendant was summoned for driving a motor car at a speed exceeding 10 miles an hour on a road where that was the maximum speed allowed, and he wrote to the prosecutor admitting the offence. At the hearing the defendant was not personally present, but appeared by a solicitor, who, on his behalf, pleaded guilty to the charge and also to a previous conviction. Notwithstanding this the justices granted a warrant for the arrest of the defendant on an intimation from the inspector of police in charge of the case that he required the defendant's personal attendance.

HELD—that the justices had no justification for the issue of the warrant.

R. v. MONTGOMERY AND OTHERS, JUSTICES, EX [PARTE LONG, 102 L. T. 325; 74 J. P. 110; 26 T. L. R. 225; 22 Cox, C. C. 304; 8 L. G. R. 234—Div. Ct.]

7. *Obstructing Footway*—*“Extenuating Circumstances”*—*Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (1).*—On an information laid by the police against the respondent for placing a stall on the footway of a certain street contrary to the provisions of a local Act, it was proved that the stall projected over the footway about 16 inches, that in the same street there were other stalls projecting over the footpath causing more obstruction than the respondent's stall; and that no proceedings had been instituted against the owners of those other stalls. The justices dismissed the information under the provisions of sect. 1, sub-sect. 1, of the Probation of Offenders Act, 1907, owing to the extenuating circumstances under which the offence was committed.

HELD—that there were extenuating circumstances, and that the justices were therefore justified in dismissing the information.

DUNNING v. TRAINER, 101 L. T. 421; 73 J. P. [400; 25 T. L. R. 658; 22 Cox, C. C. 170; 7 L. G. R. 919—Div. Ct.]

II. Jurisdiction and Powers of Justices—Continued.

8. *Apprehended Breach of the Peace—Recognisances to be of Good Behaviour.*—An information was laid against a defendant alleging that he intended to lead a procession through the streets of Liverpool on a certain day, that the consequence of his having on a previous occasion led a similar procession through the streets had been a breach of the peace, riot, and damage to property, and that the informant apprehended that similar consequences would ensue again, and praying that the defendant be ordered to find sureties to keep the peace and to be of good behaviour. The magistrate issued a warrant, upon which the defendant was arrested and brought before him on the day prior to that on which the procession was intended to be held. The magistrate then granted a series of adjournments during which the defendant was liberated on his own recognisances and those of two sureties, and ultimately some weeks after the day in question had passed ordered the defendant to enter into his own recognisances for twelve months to keep the peace and be of good behaviour or in the alternative to be imprisoned for four months.

HELD—that in the circumstances the magistrate had jurisdiction to make the order although the date of the intended procession had passed.

R. v. LITTLE AND DUNNING, EX PARTE WISE, [101 L. T. 859; 74 J. P. 7; 26 T. L. R. 8; 22 Cox, C. C. 225—Div. Ct.]

9. *Appearance of Defendant by Counsel—Offence Punishable Summarily—Decision to Convict—Proof of Previous Convictions—Identity—Warrant to Compel Defendant to Appear—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 13.*—Where a defendant has been summoned before justices in respect of an offence punishable on summary conviction, and has appeared by counsel or attorney but not personally, and the justices have heard the case and decided to convict, they have no power to issue a warrant for the arrest of the defendant in order that he may be produced in Court and identified for the purpose of proving previous convictions alleged by the prosecution.

R. v. THOMPSON, [1909] 2 K. B. 614; 78 L. J. [K. B. 1085; 100 L. T. 970; 73 J. P. 403; 25 T. L. R. 651; 22 Cox, C. C. 129; 7 L. G. R. 979—Div. Ct.]

10. *Distress for Rent—Excessive Charges—Order by Justices for Payment of Treble Amount—Penalty—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93), s. 2—Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), ss. 4, 5.*—An order made by justices under sect. 2 of the Distress (Costs) Act, 1817, for the payment of treble the amount of moneys unlawfully taken on the levying of a distress is enforceable by imprisonment in default of sufficient distress,

such sum being a penalty and not a civil debt.

R. v. DAILY, EX PARTE NEWSON, 104 L. T. [892; 75 J. P. 333—Div. Ct.]

11. *Adjournment of Case for Six Months—Refusal of Jurisdiction—Licensing (Ireland) Act, 1836 (6 & 7 Will. 4, c. 38), s. 8.*—A publican was summoned under the Licensing (Ireland) Act, 1836, for flying a flag (not being the usual sign of his premises) from his public-house. The justices, in the interests of the peace of the district, adjourned the hearing of the summons for six months:—

HELD—that the justices, having taken into account matters extra-judicial, had in fact declined to adjudicate, and were guilty of a breach of duty, and that a peremptory *mandamus* to hear the summons must issue, the justices to pay the costs.

R. (REGAN) v. JUSTICES OF MONAGHAN, 45 [I. L. T. 10—Div. Ct., Ireland.]

12. *Claim of Right—Market Place—Right of Fair—Obstruction—Jurisdiction Ousted—Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), s. 13 (3).*—To a complaint before justices at petty sessions under sect. 13 (3) of the Summary Jurisdiction (Ireland) Act, 1851, for obstructing the public highway the defence was raised that the acts of obstruction were done in the exercise of the right of defendant to expose for sale her goods in a market place on fair day.

HELD—that such a defence if raised *bona fide* ousted the jurisdiction of the justices.

R. (KENNEDY) v. COUNTY CORK JUSTICES, 45 [I. L. T. 217—Div. Ct., Ireland.]

III. PROCEDURE.

See also No. 23, *infra*; CRIMINAL LAW, No. 5; EDUCATION, No. 7; GAMING, No. 7.

13. *Depositions—Person Charged with Indictable Offence—Duty to Take Deposition at Residence of Witness Dangerously Ill—Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17—Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6.*—Where a person is brought before a magistrate charged with any indictable offence, it is the duty of such magistrate, under sect. 17 of the Indictable Offences Act, 1848, if it is practicable for him to do so, to take the deposition of a witness who is dangerously ill, and is therefore unable to attend the court-house, at the place where the witness is. Whether it is or is not practicable for the magistrate to take such deposition is a question for the magistrate's own discretion, which, however, he must exercise in a judicial manner without making a distinction depending on the gravity of the offence. Where it is not practicable for such magistrate to act, application may be made, under sect. 6 of the Criminal Law Amendment Act, 1867, that some other magistrate should take the deposition.

R. v. BROS, EX PARTE HARDY, [1911] 1 K. B. [159; 80 L. J. K. B. 147; 103 L. T. 728; 74 J. P. 483; 27 T. L. R. 41; 55 Sol. Jo. 47; 22 Cox, C. C. 352—Div. Ct.]

III. Procedure—Continued.

14. *Non-County and Non-Quarter Sessions Borough—Costs of Unsuccessful Prosecutions—Destination of Unappropriated Fines.*—In the non-county borough of Pembroke, which has 10,000 inhabitants and no separate court of quarter sessions, the salary of the justices' clerk is paid by the borough, while, under contract with the justices of the county of Pembroke, the cost of police is borne by the county in return for a fixed annual payment. Questions having arisen between the borough and county justices as to (1) the destination of unappropriated fines inflicted by the borough justices; and (2) whether, in prosecutions instituted by the police before the borough justices, in which the fees of the justices' clerk are not recovered from the defendant, such fees should be paid by the county or the borough:—

HELD—that fines imposed by the borough bench and not otherwise appropriated were, unless some legal defence was shown, payable to the county treasurer, and that the costs of prosecutions undertaken by the police before the borough justices, in cases in which such costs were not remitted and were not paid by the defendant, were not chargeable to the funds of the county.

GEORGE v. THOMAS, [1910] 2 K. B. 951; 80 [L. J. K. B. 7; 103 L. T. 456; 74 J. P. 398; 8 L. G. R. 849—Scrutton, J.

15. *Summons—Absence of Seal—Defect in Form—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 1.*—A summons issued by a justice of the peace directed to a defendant did not bear a seal.

HELD—that if the absence of a seal was a defect it was a defect in form within the meaning of the proviso to sect. 1 of the Summary Jurisdiction Act, 1848, and no objection could be taken thereto.

Semle (per Hamilton, J.), the use of a seal on a summons is still necessary; (*per* Avory, J.) a seal is not now obligatory.

R. v. GARRETT-PEGGE, EX PARTE BROWN, [1911] 1 K. B. 880; 80 L. J. K. B. 609; 104 L. T. 649; 75 J. P. 169; 27 T. L. R. 187—Div. Ct.

16. *Service of Summons—"Place of Abode"—Lock-up Shop—Estoppel—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 1.*—“Place of abode” in sect. 1 of the Summary Jurisdiction Act, 1848, does not include a shop where the person sought to be served does not reside.

A shopkeeper informed an inspector under the Sale of Food and Drugs Act on the purchase of a sample that the shop was his private address and he lived there. As a fact he resided elsewhere, and summonses were served by a police officer on the wife of the tenant of one of the flats in the building of which the shop formed the ground floor. The shopkeeper had no knowledge of any proceedings until after he had been convicted.

HELD—that the service was bad; and, further, that the shopkeeper was not estopped from setting up such bad service, as there was no evidence that he made the statement to the inspector for the purpose of avoiding service.

R. v. LILLEY, EX PARTE TAYLOR, 104 L. T. 77; [75 J. P. 95—Div. Ct.

17. *Illness of Magistrate in course of Proceedings—Re-hearing before Different Magistrate—Evidence—Reading over Depositions.*]

—In the course of proceedings against certain defendants for conspiracy, in which a number of sittings had been held and a large number of witnesses had been examined, the magistrate before whom the proceedings were pending broke down in health, so that it became impossible for him to continue the hearing. Another magistrate sat to take the hearing, and he proposed that the witnesses who had already been examined should be recalled and their depositions read over to them, and that they should be allowed to correct the depositions where they were wrong, with liberty to counsel for the prosecution and for the defence further to examine and cross-examine those witnesses. The defendants objected to this course, and claimed that the witnesses should be examined and cross-examined *de novo*.

HELD—that there was nothing in law to prevent the magistrate taking the course he proposed; and that he should exercise his discretion as to allowing, in any particular case, any witness to be examined in a particular way, or as to postponing the reading of any witness's cross-examination till he should be interrogated in the first instance on passages in his former evidence.

EX PARTE BOTTOMLEY AND OTHERS, [1909] 2 [K. B. 14; 78 L. J. K. B. 547; 100 L. T. 782; 73 J. P. 246; 25 T. L. R. 371; 22 Cox, C. C. 106—Div. Ct.

18. *Absence of Informant—Offer to Adjourn—Refusal of Offer—Objection to Conviction—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 13.*—The appellant was summoned by the respondent, a superintendent of police, for driving a motor cycle at a speed which was dangerous to the public, having regard to all the circumstances of the case. At the hearing the appellant appeared personally along with his solicitor, but the respondent was not present either personally or by counsel or solicitor, the witnesses for the prosecution being examined by a subordinate police officer. During the course of the case the appellant's solicitor requested the justices' clerk to make a note of the name of the police officer who was conducting the case, whereupon the bench offered to adjourn the case. The appellant's solicitor, however, said that he preferred that the case should proceed. The case proceeded accordingly, and the appellant was convicted.

HELD—that the absence of the informant could not be put forward as an objection to

III. Procedure—Continued.

the conviction after the offer to adjourn had been declined by the appellant's solicitor.

MAY v. BEELEY, [1910] 2 K. B. 722; 79 [L. J. K. B. 852; 102 L. T. 326; 74 J. P. 111; 22 Cox, C. C. 396; 8 L. G. R. 166—Div. Ct.

19. *One Summons Charging Cruelty to Four Animals—Four Convictions—Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92).*—The defendant was charged in one summons under the Cruelty to Animals Act, 1849, with cruelly ill-treating four ponies by having between March 20th and April 6th, 1909, supplied them with unsuitable food. He was not informed when he appeared that he had to answer more than one charge, nor did he know till the justices, after having heard the case, returned into Court that he was to be convicted of more than one offence. The justices having convicted the defendant of an offence in respect of each of the four ponies, and imposed a fine in respect of each:—

HELD—that three of the convictions must be quashed.

R. v. RAWSON, [1909] 2 K. B. 748; 22 Cox, [C. C. 173; *sub nom.* R. v. TRAFFORD-LAWSON AND OTHERS, JUSTICES, 25 T. L. R. 785—Div. Ct.

20. *Conviction Sentence Pronounced—Subsequent Alteration—Increase of Fine Involving Longer Period of Imprisonment in Default—Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. 7, c. 65), s. 48.*—A person was convicted on a summary complaint, and was fined £5 with the alternative of sixty days' imprisonment. The presiding magistrate then left the Court, but having had his attention directed to the fact that in terms of sect. 48 of the Summary Jurisdiction (Scotland) Act, 1908, the period of imprisonment awarded was in excess of that competent as an alternative to the amount of the fine imposed, he returned to the Court before the accused had been removed and intimated that he had made a mistake in the sentence, which he thereupon increased to 5*l.* 5*s.* or sixty days' imprisonment.

HELD—that the alteration was incompetent, and that the conviction should be quashed.

M'RORY v. FINDLAY, [1911] S. C. (J.) 70; 48 [Sc. L. R. 314; 6 Adam, 417—Ct. of Justy.

IV. APPEALS.

See also No. 18, *supra*.

(a) To Quarter Sessions.

21. *Indecent Assault upon Person under Age of Sixteen—Consent to Summary Trial—Conviction—Right of Appeal to Quarter Sessions—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 12, 19—Children Act, 1908 (8 Edw. 7, c. 67), s. 128 (2) and Sched. II.*—When an adult is charged before a court of summary jurisdiction with the commission of

the offence mentioned in the 2nd Schedule to the Children Act, 1908, of committing an indecent assault upon a female under the age of sixteen years, and consents to be dealt with summarily, and is dealt with summarily and convicted, he has no right of appeal to quarter sessions against such conviction, inasmuch as by sect. 128, sub-sect. 2, of the Children Act, 1908, such offence is to be included in the 1st Schedule to the Summary Jurisdiction Act, 1879, and is therefore to be included with the offences specified in the second column of that schedule to which the provisions in sect. 12 of the Act of 1879 apply, under which when an adult consents to be tried summarily and is convicted he has no appeal to quarter sessions.

R. v. London Justices, *Ex parte Lambert* ([1892] 1 Q. B. 664), applied.

R. v. DICKINSON, *EX PARTE DAVIS*, [1910] 1 [K. B. 469; 79 L. J. K. B. 256; 102 L. T. 48; 74 J. P. 76; 22 Cox, C. C. 249—Div. Ct.

22. *Order for Costs—Notice of Appeal Served Out of Time—No Right of Appeal—Appeal Not Entered—Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 6.*—Under sect. 6 of the Quarter Sessions Act, 1849, quarter sessions have jurisdiction to order costs to be paid by a person who has served a notice of appeal from a summary conviction but has not entered or prosecuted the appeal, although the notice of appeal was out of time and no appeal lay from the conviction.

EX PARTE JAY, 75 J. P. N. C. 544—Div. Ct.

(b) By Special Case.

See also INTOXICATING LIQUORS, No. 6.

23. *Power of Court to Remit Case to Justices for Retrial—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 6.*—*Semble*,—Where on a case stated it appears that justices have convicted a person on a wrong ruling of law, the Court will not remit the case to the justices under sect. 6 of the Summary Jurisdiction Act, 1857, to be retried, unless in the case itself the justices request this to be done in the event of their determination being held to be wrong.

TAYLOR v. WILSON, 28 T. L. R. 97—Div. Ct.

See S. C. GAMING, No. 7.

24. *Notice of Appeal—Form.*—The notice of appeal from the decision of a Court of summary jurisdiction by way of case stated need not state on the face of it that the appellant is going on with the appeal.

Form given in Short and Mellor's Crown Office Practice (2nd ed., p. 628) and Oke's Magisterial Formulist (8th ed., p. 53) approved.

PROVINCIAL MOTOR CAB CO. v. DUNNING, [1909] 2 K. B. 599; 78 L. J. K. B. 822; 101 L. T. 231; 73 J. P. 387; 25 T. L. R. 646; 22 Cox, C. C. 159; 7 L. G. R. 765—Div. Ct.

25. *Dismissal of Charge—Not Made in Good Faith—Order for Costs—Power to State a Case—Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15),*

IV. Appeals—Continued.

ss. 1 (1), 6 (3).]—Where a charge made against any person for an indictable offence (not dealt with summarily) is dismissed by the examining justices under sect. 6 (3) of the Costs in Criminal Cases Act, 1908, and they order the prosecutor to pay the costs of the defence on the ground that the charge was not made in good faith, the justices have power to state a case and may be ordered to do so.

R. v. ALLEN, *EX PARTE* HARDMAN, 75 J. P. N. C. [604; 46 L. J. N. C. 806—Div. Ct.

V. ACTIONS AGAINST MAGISTRATES.

See No. 11, *supra*.

MAINTENANCE.

See ACTION,; BASTARDY; HUSBAND AND WIFE; LUNATICS; POOR LAW; WILLS.

MALICIOUS DAMAGE.

See CRIMINAL LAW.

MALICIOUS PROSECUTION AND PROCEDURE.

See DISCOVERY, No. 4.

MANDAMUS.

See CROWN PRACTICE.

MANITOBA.

See DEPENDENCIES AND COLONIES.

MANOR.

See COPYHOLDS.

MANSLAUGHTER.

See CRIMINAL LAW AND PROCEDURE.

MARGARINE.

See FOOD AND DRUGS.

MARINE INSURANCE.

See INSURANCE.

MARITIME LIENS.

See SHIPPING AND NAVIGATION.

MARKET GARDENS.

See AGRICULTURE, No. 5.

MARKET OVERT.

See SALE OF GOODS, No. 4.

MARKETS AND FAIRS.

I. IN GENERAL	COL. 354
II. TOLLS	355
III. HAWKERS	355

[No paragraphs in this vol. of the Digest.]

See also MAGISTRATES, No. 12.

I. IN GENERAL.

1. *Disturbance of Market—Sale in Warehouse within Market Limits—“Shop”*—Southwark Borough Market Acts, 1754 (28 Geo. 2, c. 123), s. 4, and 1756 (30 Geo. 2, c. 31), s. 10.]—Sect. 10 of the Southwark Borough Market Act, 1756, provides that no person shall sell or offer for sale any beef, mutton, poultry, butter, fish, fruit, or other victuals or provisions whatsoever in any private house, lane, alley, inn, warehouse, street, stall, or other place whatsoever within 1,000 yards of the market, but only in his, her, or their own shop or shops or in the public market place and in market time only.

HELD—that premises constituted a “shop” within the exception in sect. 10, notwithstanding that part thereof was used as a warehouse to store goods intended for immediate sale, and that other persons’ goods were sold therein on commission.

Decision of Neville, J. ([1911] 1 Ch. 374; 80 L. J. Ch. 229; 104 L. T. 16; 27 T. L. R. 183) affirmed.

HAYNES v. FORD, [1911] 2 Ch. 237; 80 L. J. Ch. [490; 104 L. T. 696; 75 J. P. 401; 27 T. L. R. [416; 9 L. J. G. R. 702—C. A.

2. *Breach of Market Act—Sale Without a Licence—Liability for Act of Agent—Taunton Town and Market Regulation Act, 1768* (9 Geo. 3, c. xlv.)—Taunton Town and Market Regulation Act, 1833 (3 & 4 Will. 4, c. xlvi.),

I. In General — Continued.

s. 20 — *Taunton Town and Market Supplemental Act, 1840* (3 & 4 Vict. c. xliii.), s. 17.] D. was summoned under a local market Act for selling mutton without a licence in a shop within the prescribed limits. It was proved that D. had only a licence to sell pork, and that certain carcasses of mutton having been deposited in his shop for temporary storage only and not for sale, his wife, who had no authority to sell any kind of meat except pork, sold some mutton to a customer without the knowledge of D. and in direct disobedience to orders *bonâ fide* given by him to her. The justices dismissed the summons on the ground that it was necessary to prove guilty knowledge on the part of D. in order to render him liable to the penalty imposed by the Act.

HELD—that although D. would have been liable if his wife had in selling the mutton acted within the scope of her general authority express or implied, whether there was guilty knowledge on the part of D. or not, yet as the wife had in fact exceeded the scope of her general authority, D. was not liable.

WAKE v. DYER, 104 L. T. 448; 75 J. P. 210; [9 L. G. R. 348—Div. Ct.]

II. TOLLS.

3. *Sale from Milk Cart Within Prescribed Limits but not in Market—Markets and Fairs Clauses Act, 1847* (10 & 11 Vict. c. 14), s. 13.]—By a table of tolls of a certain market there was to be a toll “for every cart containing milk, fish, or other goods, provisions, marketable commodities, or articles” brought to the market for sale or exposure for sale.

The respondent sold milk from a cart within the prescribed limits of the borough, but not in the authorised market, and was summoned under sect. 13 of the Markets and Fairs Clauses Act, 1847, which was incorporated in the local Act, for unlawfully selling, within the prescribed limits, milk in respect of which toll was duly authorised to be taken in the market.

HELD—that the toll was a toll on every cart containing milk and not on the sale of milk, and the respondent could not be convicted for unlawfully selling milk within the prescribed limits.

JENKINS v. THOMAS, 104 L. T. 74; 75 J. P. 87; [9 L. G. R. 321—Div. Ct.]

III. HAWKERS.

[No paragraphs in this vol. of the Digest.]

MARRIAGE.

See HUSBAND AND WIFE.

MARRIAGE, PROOF OF.

See EVIDENCE; HUSBAND AND WIFE.

MARRIAGE SETTLEMENTS.

See CONFLICT OF LAWS; SETTLEMENTS.

MARRIED WOMAN.

See HUSBAND AND WIFE.

MARSHALLING ASSETS AND SECURITIES.

See BANKRUPTCY AND INSOLVENCY; EXECUTORS AND ADMINISTRATORS.

MARTIAL LAW.

See ROYAL FORCES.

MASTER AND SERVANT.

COL.

I. LIABILITY OF MASTER FOR INJURY TO SERVANT.**1. Under Workmen's Compensation Acts, 1897—1906.**

(a) Accident	357
(b) Alternative remedies	362
(c) Ancillary or Incidental Work	364

[No paragraphs in this vol. of the Digest.]

(d) Assessment of Compensation. 364	
(1) <i>Difference in Wages or Earning Capacity</i>	364
(2) <i>Extras, Deductions and Apportionment</i>	364
(3) <i>Length and Continuity of Employment</i>	366

[No paragraphs in this vol. of the Digest.]

(4) <i>General</i>	366
(e) Commencement of Proceedings: Notice, Claim, Dispute.	366
(f) Dependants.	369
(g) Indemnity	371
(h) Jurisdiction	372
(i) Medical Examination	373
(j) On, in or about	375

[No paragraphs in this vol. of the Digest.]

(k) Out of and in the Course of Employment	375
(l) Practice.	389
(1) <i>Appeals and New Trials</i>	389
(2) <i>Costs</i>	390

[No paragraphs in this vol. of the Digest.]

Master and Servant—Continued.**I. LIABILITY OF MASTER FOR INJURY TO SERVANT—Continued.****1. Under Workmen's Compensation Acts, 1897—1906—Continued.**

(3) Arbitration	COL. 390
(m) Redemption of Payment	391
(n) Registration of Agreement	392
(o) Reviewing Award	393
(p) Serious and Wilful Misconduct	397
(q) Sub-contracting, etc.	397
[No paragraphs in this vol. of the Digest.]	
(r) Workman and Employer	397
(s) Contracting Out	399
(t) Surgical Operations	399
(u) Industrial Diseases	399

2. Under Employers' Liability Act, 1880

[No paragraphs in this vol. of the Digest.]

3. Apart from Workmen's Compensation and Employers' Liability Acts**II. LIABILITY OF MASTER FOR ACTS OF SERVANT****III. CONTRACTS BETWEEN MASTER AND SERVANT NOT RELATING TO PERSONAL INJURIES****IV. DISMISSAL****V. WAGES****VI. SEDUCTION OF SERVANT**

[No paragraphs in this vol. of the Digest.]

VII. APPRENTICES

See also CRIMINAL LAW, No. 58; REVENUE, Nos. 7, 8, 9.

I. LIABILITY OF MASTER FOR INJURY TO SERVANT.**1. Under Workmen's Compensation Acts, 1897—1906.**

See also INSURANCE, No. 1; SHIPPING, No. 3.

(a) Accident.See also I., 1 (k), *infra*.

1. Murder—Risk Incidental to Particular Employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—The murder of a servant who by reason of his employment is peculiarly exposed to such a risk is an accident arising out of the employment within the meaning of sect. 1 of the Workmen's Compensation Act, 1906.

Challis v. London and South-Western Ry. Co. ([1905] 2 K. B. 155) applied.

NISBET v. RAYNE AND BURN, [1910] 2 K. B. 689; [80 L. J. K. B. 84; 103 L. T. 178; 26 T. L. R. 632; 54 Sol. Jo. 719; 3 B. W. C. C. 507—C. A. See S. C. under I., 1 (k), *infra*.

2. Sewer Gas Poisoning—"Accident"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58),

s. 1.]—E., a labourer, who was in the respondent's service as caretaker of an unoccupied house, opened up, in July, 1909, in the course of his employment, certain cesspools. Early in August E. complained of being unwell, and on August 23 he consulted a doctor, who thought that he was suffering from the smell of paint. In September another doctor was consulted, and he came to the conclusion that E. was suffering from poisoning from sewer gas. On October 30 E. died. It was admitted that the disease from which E. had suffered was obscure, and that there was nothing to show the exact date at which it was contracted by him. In proceedings for compensation under the Workmen's Compensation Act, 1906, by E.'s widow, the county court judge came to the conclusion that E. died from the results of poisoning contracted while working on the cesspools, and he made an award in favour of the applicant.

HELD—that E.'s death had not been caused by "accident" within the meaning of the Act.

EKE v. HART-DYKE, [1910] 2 K. B. 677; 80 [L. J. K. B. 90; 103 L. T. 174; 26 T. L. R. 613; 3 B. W. C. C. 482—C. A.

3. Apoplexy—Evidence Equally Balanced for or Against Accident—Onus of Proof—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A collier died of apoplexy during working hours in a mine. The majority of the doctors said that his arteries were in a very diseased condition, and that apoplexy might have come upon him when asleep in bed, or when walking about, or when over-exerting himself. The collier's work on that day was to build a "pack"; but there was no evidence that the apoplexy came upon him when he was incurring a strain.

HELD—that as the evidence as to the cause of death was equally consistent with an accident and with no accident, the applicants had not discharged the onus of proof that was upon them.

Decision of C. A. (102 L. T. 621; 3 B. W. C. C. 216) affirmed.

BARNABAS v. BERSHAM COLLIERY CO., 103 [L. T. 513; 50 Sol. Jo. 63; 4 B. W. C. C. 119; 48 Sc. L. R. 727—H. L.

4. Accident not Causing Incapacity but Making Patent a Pre-existing Incapacity—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—An accident to a workman which does not cause an incapacity but only makes patent a pre-existing incapacity does not entitle the workman to compensation under the Workmen's Compensation Act, 1906.

So **HELD** by Cozens-Hardy, M.R., and Buckley, L.J. (*Moulton, L.J.*, dissenting).

The applicant, an edge-tool moulder, met with an accident sixteen years ago, through a piece of steel striking his left eye. Three years later the eye became blind, but it was not removed, and to all appearances the eye was normal, and the applicant for twelve or thirteen years continued to work at his trade, and earned his old wages. In 1910, while the

I. Liability of Master for Injury to Servant— *Continued.*

applicant was at work, a piece of brick struck his left eye and set up so much inflammation that the eye had to be removed. Compensation was paid to him by his employers until he recovered from the operation. Subsequently the employers and others refused to employ the applicant on account of the fact that he had only one eye. He then applied for compensation under the Workmen's Compensation Act, 1906, for loss of wage-earning capacity.

HELD (Moulton, L.J., dissenting)—that the applicant's incapacity was not caused by the accident in 1910, but by the accident which happened sixteen years previously, and, therefore, that he was not entitled to compensation.

BALL v. W. HUNT AND SONS, LD., [1911]
[1 K. B. 1048; 80 L. J. K. B. 655; 104
L. T. 327; 27 T. L. R. 323; 55 Sol. Jo.
383; 4 B. W. C. C. 225—C. A.]

5. *Former Accident Contributing to Present Incapacity—Claim in Respect of Earlier Accident—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), s. 1.]—In 1902 a workman met with an accident at certain works, where he was employed as a riveter, in consequence of which the first finger of his right hand was amputated at the root of the finger. He was paid compensation until the stump healed, but he could not resume his former work. In 1903 he was given work with the same employers as a caulker, which involved using a light hammer in place of the heavy hammer used by riveters. In 1910, at the suggestion of a foreman, he commenced using a heavy pneumatic hammer, during the use of which there was a great deal of vibration. A few days afterwards his hand became inflamed, and he was obliged to leave off work. He then claimed compensation under the Workmen's Compensation Act, 1897, in respect of the accident of 1902. The county court judge awarded compensation on the ground that the accident of 1902 was one of the contributing causes of the latter incapacity.

HELD—that the question was not whether the accident of 1902 was a contributing cause to the later incapacity; that taking all the circumstances together the later injury was met with under circumstances which did not involve an accident; and further, that there was no evidence to justify the county court judge finding as a fact that the accident of 1902 was one of the contributing causes of the later incapacity.

NODEN v. GALLOWAYS, LD., [1912] 1 K. B. 46;
[1911] W. N. 192; 81 L. J. K. B. 28; 105
L. T. 567; 28 T. L. R. 5; 55 Sol. Jo. 838—C. A.]

6. *Death shortly after Accident—Connection between Accident and Death—Burden of Proof—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).]—A carman fell from his van and sustained injuries. He died three weeks later. No evidence was produced to show the connection between the accident and death, the doctor who had attended the man being abroad.

HELD—that there was no evidence that the death was due to the accident.

HONOR v. PAINTER, 4 B. W. C. C. 188—C. A.]

7. *Death shortly after Accident—Connection between Accident and Death—Burden of Proof—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, (1).]—A workman fell from a cart and was injured. He died nine days afterwards. The only medical evidence called was to the effect that there was no connection between the accident and the death. The county court judge, however, found that death was due to the accident, and awarded compensation.

HELD—that the dependant had not discharged the onus of proving that death was due to the accident.

BROWNE v. KIDMAN, 4 B. W. C. C. 199—
[C. A.]

8. *Rupture of Cartilage of Knee—Previous "Wrench" to Knee—Recurrence—Burden of Proof—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—In arbitration proceedings to recover compensation under the Workmen's Compensation Act, 1906, it was proved that the claimant, while in the course of his employment on December 4th, 1908, felt a severe pain in his knee on rising from a kneeling position; that on examination one of the cartilages of the knee was found to be ruptured; that incapacity resulted; that three years previously, while in the employment of third parties, he had sustained a "wrench" to the knee which resulted in incapacity for some weeks; that on several subsequent occasions he felt momentary pain in the knee on rising from it, but was not thereby prevented from continuing to work.

HELD—that the claimant had suffered injury by accident on December 4th, 1908, within the meaning of the Act.

Per Lord Dundas—that the onus lay on the employers to show that no new injury was sustained, but that anything suffered on December 4th, 1908, was due to the former accident.

BORLAND v. WATSON, GOW & CO., LD., 49 Sc.
[L. R. 10—Ct. of Sess.]

9. *Recurrence of Rupture—No Proof of Specific Accident—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).]—A farm labourer, while engaged in his employment, had a recurrence of an old rupture, which became strangulated and caused his death. There was no proof of anything specific having happened to him to cause the rupture to recur, and the arbitrator refused compensation on the ground that it was not proved that the workman had met with an "accident."

HELD—that on the facts the arbitrator's decision could not be held to be unreasonable.

WALKER v. MURRAY, [1911] S. C. 825; 48
[Sc. L. R. 741; 4 B. W. C. C. 409—Ct. of Sess.]

10. *Workmen Engaged to Take Place of Workmen on Strike—Assault by Workmen on Strike—Workmen's Compensation Act, 1906*

1. Liability of Master for Injury to Servant—*Continued.*

Edw. 7, c. 58), s. 1.]—The employés in a wood yard having gone out on strike, other workmen were brought in to take their places. The strikers made an attack on the works and assaulted and threw stones at the workmen there employed. One of the workmen so injured claimed compensation under the Workmen's Compensation Act, 1906.

HELD—that his injury was not injury "by accident" within the meaning of sect. 1 of the Act.

Nisbet v. Rayne and Burn (supra) and *Anderson v. Balfour* ([1910] 2 I. R. 497) disagreed with.

MURRAY v. DENHOLM & Co., [1911] S. C. [1087; 48 Sc. L. R. 896—Ct. of Sess.

11. *Death as Result of Injury by Accident—Natural or Probable Consequence—Acceleration of Death by Conduct of Workman—Paraphrase by Arbitrator—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I. (1).*]—A workman while engaged in laying drain pipes was struck on the back by a stone falling from the surface and was injured. A day or two afterwards he was seen by a doctor, who diagnosed pneumonia and sent him to hospital, where he remained for three days, when he insisted on being taken home. He was accordingly assisted home—a distance of some ten minutes' walk—by some neighbours. This was done in spite of warning by the doctor in attendance at the hospital that such a course was dangerous to life. He died two days afterwards.

In an application by his widow for compensation under the Workmen's Compensation Act, 1906, the sheriff-substitute, acting as arbitrator, found that, on a consideration of the whole case, together with the report by a medical referee, "but for the accident the deceased would not have died at the time at which, and in the way in which, he did die," and that the injury by accident was thus the cause of death.

HELD—that the arbitrator had not discharged the duty imposed on him by the Act of considering whether the death did "result" from the injury by accident, and case remitted to him to determine that question and to report.

HELD FURTHER—the sheriff-substitute having reported that he found as a fact that the man's death resulted from the accident labelled—that there was evidence on which the sheriff-substitute might competently find as he did.

DUNNIGAN v. CAVAN AND LIND, [1911] S. C. [579; 48 Sc. L. R. 459; 4 B. W. C. C. 386—Ct. of Sess.

12. *Pneumonia Caused by Inhalation of Poisonous Gas—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).]—A miner employed in a mine in the course of his work fired a shot of gunpowder, and about three minutes after the explosion returned to the

working-place when it was still full of smoke. He subsequently died from pneumonia, caused by the inhalation of carbon monoxide gas generated by the explosion. It was found proved that this gas was generated by the combustion of gunpowder in varying proportions depending on the ventilation, that similar blasting operations were of daily occurrence, and that on previous occasions the deceased had suffered from headache and nausea caused by the gas.

HELD—that the miner's death resulted from an accident within the meaning of the Workmen's Compensation Act, 1906.

KELLY v. AUCHENLEA COAL CO., LD., [1911] [S. C. 864; 48 Sc. L. R. 768; 4 B. W. C. C. 417—Ct. of Sess.

13. *Cause of Death—Engine Driver—Tightening Nut—Evidence—Accidental Fall—Fainting Fit—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—An engine driver was engaged whilst his train was at a railway station in tightening a nut in the engine; he had one knee on the engine frame and one foot on the platform. He was next seen lying on the permanent way between the engine and platform with his two legs "doubled up." He exhibited signs of agony, and died within five minutes of the occurrence. There was no evidence to show what caused him to fall to the permanent way, but, on the hearing of the widow's claim for compensation, evidence was given showing that on at least three previous occasions, when the train was at a station, the deceased had collapsed in a faint and lay unconscious for some minutes. From the medical evidence, however, it appeared that he "undoubtedly had a sound heart." A few days before the occurrence the deceased was examined by the physician of the company, and was presumably passed as physically fit for his position.

HELD—that there was sufficient evidence to justify the finding of fact by the county court judge that the man's death resulted from injury by accident arising out of and in the course of his employment.

FENNAH v. MIDLAND GREAT WESTERN RY. [OF IRELAND, 45 I. L. T. 192; 4 B. W. C. C. 440—C. A., Ireland.

(b) Alternative Remedies.

14. *Action against Stranger—Taking Weekly Payments from Employer—Knowledge of Contents and Effect of Receipt—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 6.]—The plaintiff, who met with an accident in the course of his employment, owing, as he alleged, to the negligence of the defendants' servants, the defendants not being the plaintiff's employers, accepted several weekly payments from his employers, and gave them receipts therefor in the following terms:—"Received under the Workmen's Compensation Act, 1906 . . . the sum of 12s. 8d., being compensation at the rate of one half my average weekly wages up to . . . in respect of an accident which occurred to me on or about April 17, 1909." Subsequently the

I. Liability of Master for Injury to Servant— *Continued.*

plaintiff repaid to his employers the amounts he had received from them, and then sued the defendants for damages. At the trial the plaintiff stated that he did not understand the nature and terms of the receipts he had signed. The county court judge nonsuited the plaintiff, holding, as a matter of law, that the plaintiff had recovered compensation within the meaning of sect. 6 of the Workmen's Compensation Act, 1906, and that his action was therefore barred.

HELD—that the county court judge was wrong in nonsuiting the plaintiff, as it was a question for the jury whether the plaintiff understood the nature and effect of the receipts he had signed.

Decision of Div. Ct. (26 T. L. R. 580; 3 B. W. C. C. 536) affirmed.

HUCKLE v. LONDON COUNTY COUNCIL, 27 [T. L. R. 112; 4 B. W. C. C. 113—C. A.]

15. Workmen's Notice "under Employers' Liability Act and Workmen's Compensation Act"—Receipt in Full Settlement under Employers' Liability Act—No bona fide Exercise of Option—Subsequent Death—Claim by Dependents Not Barred—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (2), (b); Sched. I., (1) (a).]—A workman was injured by accident. He gave notice under the Employers' Liability and Workmen's Compensation Acts. His employers settled with him for a lump sum, obtaining a receipt releasing them from all liability under the Employers' Liability Act and at common law. The workman died, and his dependents claimed under the Workmen's Compensation Act, 1906, subject to the deduction of the sum paid under the settlement. The county court judge found as a fact that there had been no bona fide exercise by the workman of his option to take proceedings independently of the Workmen's Compensation Act, 1906, and made an award in favour of the dependents.

HELD—that the right of the dependents was independent of, and not derivative from, that of the deceased, and that therefore, on the county court judge's finding of fact, they were entitled to recover.

HOWELL v. BRADFORD & Co., 104 L. T. 433; [4 B. W. C. C. 203—C. A.]

16. Unsuccessful Action for Damages by Father of Deceased Workman—Request for Assessment of Compensation under Act—Claim by other Dependents more than Six Months after Accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (4).]—The father of a deceased workman raised an action of damages against his son's employer, and, being unsuccessful, requested compensation to be assessed under the Workmen's Compensation Act, 1906. Thereafter, and when more than six months had expired since the workman's death, the mother and sisters of the deceased workman claimed compensation as dependents.

HELD—that the right given under sect. 1, sub-sect. 4, of the Act was a privilege personal

to the raiser of the action, and that the statutory six months having expired, the mother and sisters were not entitled to claim compensation.

McGINTY v. KYLE, [1911] S. C. 589; 48 Sc. [L. R. 474; 4 B. W. C. C. 389—Ct. of Sess.]

(c) Ancillary or Incidental Work.

[No paragraphs in this vol. of the Digest.]

(d) Assessment of Compensation.

See also Nos. 35, 97, 98, *infra*.

(1) Difference in Wages or Earning Capacity.

See also No. 4, *supra*.

17. Average Earnings—Fall in Wages by Reason of Passing of Eight Hours Act—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (3).]—The applicant, a collier, was injured in the course of his employment in 1907. He received a weekly payment of £1 during total incapacity. In August, 1911, he commenced proceedings to have compensation awarded in respect of his partial incapacity. At the time of the accident the applicant was earning £2 19s. 1d. per week; in August, 1911, he was earning £1 12s. 7d. per week. Since the time of the accident colliers' earnings had fallen considerably owing to the passing of the Coal Mines Regulation Act, 1908.

HELD—that in fixing the amount of the weekly payment payable to the applicant regard must be had to the circumstance that a great reduction in colliers' wages had been effected by reason of the passing of the Coal Mines Regulation Act, 1908.

BEVAN v. ENERGLYN COLLIERY CO., [1912] [1 K. B. 63; W. N. 206; 105 L. T. 654; 28 T. L. R. 27—C. A.]

18. Workman Returning to former Full Work—Complaints by Employer—Workman voluntarily leaves Work—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (b).]—A waitress had an injury to her finger, which, becoming stiff, prevented her from working as efficiently as before. She received compensation for some time, and then returned to her old work at her old wages. She could not work as well as before, and her employers complained of her clumsiness. She left work of her own accord and claimed compensation. The county court judge found that she could not work as well as before, and that she was therefore partially incapacitated, and entitled to compensation.

HELD—there was evidence to support this finding.

WARD v. MILES, 4 B. W. C. C. 182—C. A.

(2) Extras, Deductions, and Apportionment.

19. Seaman—Wages Paid Between Date of Accident and Discharge—"Payment, Allowance or Benefit"—Period of Incapacity—Merchant Shipping Acts, 1894 and 1906—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 7 (1) (e); Sched. I. (3).]—Wages paid to a

I. Liability of Master for Injury to Servant—*Continued.*

seaman between the date of an accident and his discharge by the shipowners do not come within the words "payment, allowance or benefit" in Sched. I. (3) of the Workmen's Compensation Act, 1906.

HELD, therefore, that the county court judge was right in declining to have regard to eight days' wages paid to a seaman between the happening of the accident and his discharge, as the words "during the period of his incapacity" mean the period during which the shipowner is liable to pay compensation under the Act, and which begins when the seaman ceases to be entitled to maintenance under the Merchant Shipping Acts.

Decision of C. A. ([1909] 2 K. B. 704; 78 L. J. K. B. 1144; 101 L. T. 90; 25 T. L. R. 691; 53 Sol. Jo. 650; 2 B. W. C. C. 208) reversed.

McDERMOTT v. OWNERS OF STEAMSHIP "TINTORETTO," [1911] A. C. 35; 80 L. J. K. B. 161; 103 L. T. 769; 27 T. L. R. 149; 55 Sol. Jo. 124; 11 Asp. M. C. 515; 4 B. W. C. C. 123; 48 Sc. L. R. 728—H. L.

20. Concurrent Contracts of Service—Workman in Royal Naval Reserve—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 9; *Sched. I. (2).*—The applicant was a stoker on a merchant vessel, and was also enrolled in the Royal Naval Reserve as a stoker, in respect of which latter appointment he was entitled to a retainer of £6 a year. He was injured by accident in the course of his employment on the merchant vessel, and his injuries were such as to disable him from continuing to serve in the Royal Naval Reserve. In a claim for compensation against the shipowners under the Workmen's Compensation Act, 1906:—

HELD—that in computing the applicant's average weekly earnings the amount he received as a stoker in the Royal Naval Reserve should be added to his earnings from the shipowners, as being earnings under a concurrent contract of service.

Decision of C. A. ([1911] 1 K. B. 376; 80 L. J. K. B. 217; 103 L. T. 746; 27 T. L. R. 127; 4 B. W. C. C. 6; 11 Asp. M. C. 541) affirmed.

OWNERS OF S.S. "RAPHAEL" v. BRANDY. [1911] A. C. 413; 80 L. J. K. B. 1067; 105 L. T. 116; 27 T. L. R. 497; 55 Sol. Jo. 579; 4 B. W. C. C. 307—H. L.

21. "Tips" Earned Outside Ordinary Employment—Curman—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), *Sched. I. (2) (a).*—In calculating a workman's average weekly earnings, where the evidence is that he habitually received certain tips to the knowledge of his employers, the county court judge is entitled to take them into consideration, even though such tips are given for services outside his ordinary employment.

Penn v. Spiers and Pond, Ltd. ([1908] 1 K. B. 766), applied.

KNOTT v. TINGLE JACOBS & Co., 4 B. W. C. C. [55—C. A.

(3) *Length and Continuity of Employment.* (No paragraphs in this vol. of the Digest.)

(4) *General.*

22. Grade of Employment—Average Weekly Earnings—Computation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2 (c).—A workman who was by trade a boilermaker, and who had been employed for some time as a boilermaker and for some time as a labourer under the same employer, met with an accident while employed as a labourer. In an application by his employers to review and end compensation paid to him under a verbal agreement, the arbiter, in calculating his "average weekly earnings," took into account the amount which the workman had earned as a boilermaker, and awarded him compensation on the average wage thus ascertained.

HELD—that the compensation must be based on the wages the workman was earning in the grade of employment in which he met with the accident, and that the arbiter could not competently include his wages as boilermaker.

Perry v. Wright ([1908] 1 K. B. 441) approved and followed.

BABCOCK AND WILCOX, LD. v. YOUNG, [1911] S. C. 406; 48 Sc. L. R. 298; 4 B. W. C. C. 367—Ct. of Sess.

(e) *Commencement of Proceedings: Notice, Claim, Dispute.*

See also No. 16, *supra*.

23. Liquidation of Company by which Workman Employed—Contract with Insurers—Transfer of Rights to Workman—Compliance with Provisions of Policy of Insurance—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), ss. 1, 5 (1).—In the event of any employer, who has entered into a contract with insurers in respect of any liability under the Workmen's Compensation Act, 1906, becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up, sect. 5 of that Act enables a workman injured by accident arising out of and in the course of his employment to stand by way of subrogation in the place of the employer with regard to the insurers; but a workman who takes the benefit of the section must take it with all its limitations. Where, therefore, a policy of insurance requires any difference or dispute arising between the employers and the insurers in respect of the policy to be referred to arbitration in accordance with the provisions of the Arbitration Act, 1889, such a reference is a condition precedent to the commencement of arbitration proceedings under the Act of 1906 to enforce a claim for compensation by the workman against the insurers.

KING v. PHOENIX ASSURANCE Co., [1910] 2 K. B. 666; 80 L. J. K. B. 44; 103 L. T. 53; 3 B. W. C. C. 442—C. A.

24. Claim within Six Months—Negotiations for Compensation at Common Law—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2 (1).]

I. Liability of Master for Injury to Servant— *Continued.*

—An injured workman, offered compensation under the Workmen's Compensation Act, 1906, resolved not to accept it, and instructed an agent to recover damages. This agent threatened on his behalf to raise an action at common law against his employers, and had several meetings with the agent of the insurance company which insured the employers, who was anxious to avoid litigation and to get the workman to accept compensation. Nothing, however, had been arranged, and no action had been raised by the workman, when the statutory period of six months from the accident expired. On the workman subsequently initiating proceedings under the Act, the arbitrator found that he had failed to make a claim within six months, and that there was no reasonable cause for this failure, and dismissed the application.

HELD—that there was no ground for disturbing the arbitrator's findings.

DEVONS *v.* ANDERSON AND SONS, [1911] S. C. [181; 48 Sc. L. R. 187; 4 B. W. C. C. 354—Ct. of Sess.

25. *Notice of Accident—Reasonable Cause for not giving Notice—Mistake—Ignorance of Existence of Act—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 2.]—Ignorance on the part of a workman of the existence of the Workmen's Compensation Act, 1906, and of any right to compensation for an accident arising out of his employment, is not a "mistake" nor a "reasonable cause" for not giving notice of an accident within the meaning of sect. 2 of the Act.

ROLES *v.* PASCALL & SONS, [1911] 1 K. B. [982; 80 L. J. K. B. 728; 104 L. T. 298; 4 B. W. C. C. 148—C. A.

26. *Notice of Accident—Want of Notice—"Reasonable Cause"—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 2 (1).]—On May 9th, 1910, an insurance agent, while employed in collecting premiums, fell down a stair and sustained injuries to his left side, shoulder, and arm. He gave no formal notice, as he thought his injuries were of a temporary character, but a day or two after the accident, and again on June 8th, 1910, he gave verbal notice of the accident to his employers' manager, and on June 29th, 1910, he left his situation. His injuries having subsequently become worse, and resulted in his complete incapacity for work, his agent, on September 12th, 1910, gave formal notice of the accident.

HELD—that the delay in giving notice was due to a "reasonable cause" within the meaning of sect. 2, sub-sect. 1, of the Workmen's Compensation Act, 1906, and was not a bar to proceedings under the Act.

REFUGE ASSURANCE CO., LD. *v.* MILLAR, 49 [Sc. L. R. 67—Ct. of Sess.

27. *Notice of Accident—"As soon as practicable"—Notice One Month after Accident—Employer Prejudiced—Workmen's Compensation Act, 1906, s. 2 (1) (a).*]—A workman was

injured on July 12th. He saw his employer the same evening, but did not mention the accident. He alleged that on the following day he sent notice by messenger. On July 23rd he again saw his employer, but said nothing about compensation. He alleged that on August 6th he again sent notice by registered post. On August 12th a solicitor sent formal notice on his behalf. The employer denied having received any but the last notice. The county court judge found that notice of the accident had not been given as soon as practicable after the happening thereof, and that it had not been established that the employer had not been prejudiced by the delay.

HELD—that there was evidence to support the finding.

LEACH *v.* HICKSON, 4 B. W. C. C. 153—C. A.

28. *Notice of Accident—"As soon as practicable"—Verbal Notice Next Day to Foreman Carpenter—Formal Notice Two Months after—Employers Prejudiced—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 2 (1) (a).]—A workman claimed that he had sprained his ankle at work. He said nothing at the time, and walked home. He alleged that he had sent notice the next day to the foreman carpenter under whom he worked; this the latter denied. The job finished on the day of the accident, and all the men were paid off. Formal notice was given two months later. The county court judge found that, though the notice had not been given as soon as practicable, the employers were not prejudiced by the delay.

HELD—that there was no evidence to support the finding.

BURRELL *v.* HOLLOWAY BROTHERS (LONDON), [Ld., 4 B. W. C. C. 239—C. A.

29. *Notice of Accident—Entry in Employers' Book—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), ss. 1, 2.]—Particulars of an accident to a workman arising out of and in the course of his employment entered in a book belonging to the employers by the employers' manager in the presence of the workman by whom the particulars were given constitute a "notice" sufficient to satisfy the terms of sect. 2 of the Workmen's Compensation Act, 1906.

STEVENS *v.* INSOLES, LD., [1912] 1 K. B. 36; [1911] W. N. 205; 81 L. J. K. B. 47; 105 L. T. 617—C. A.

30. *Notice of Accident—Sufficiency—Payment of Wages after Accident—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 2.]—The applicant, having been injured by accident while in the respondent's service, claimed compensation under the Workmen's Compensation Act, 1906. He did not suggest that he had himself given notice of any claim for compensation under the Act, but his wife gave evidence to the effect that she had written to the respondent each week for her husband's wages, and that the respondent had paid five weeks immediately after the accident and then stopped payment. During the sixth week she

I. Liability of Master for Injury to Servant— *Continued.*

saw the respondent at his house and asked him, if he would not compensate the applicant, whether he would compensate her and the children. He replied she was nothing to him or he to her, but he was sorry for them.

HELD—that there had been no notice of a claim for compensation under the Act, and that the applicant was therefore not entitled to an award of compensation.

JOHNSON *v.* WOOTTON, 27 T. L. R. 487; 4 [B. W. C. C. 258—C. A.]

31. Notice of Accident—Given nearly Six Months after Accident — “Mistake” — Employer Prejudiced — Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2 (1).]—A workman who had been suffering from, and had been medically treated for, lumbago met with an accident on May 30th, 1910, and on Sept. 2nd was again treated for lumbago, which might have been due to the accident. Notice of the accident was not sent to the employers until November 18th, 1910.

HELD—that as there was no mistake in the mind of the applicant about the accident, the failure to give notice of it as soon as practicable after the happening thereof could not be excused as due to “mistake,” and, further, that owing to the interval allowed to elapse between the accident and the date of the notice the employers would be prejudiced in their defence if the applicant were allowed to proceed with his claim.

SHANNON *v.* BANBRIDGE WEAVING CO., 45 [I. L. T. 74—C. A., Ireland.]

32. Gratuitous Discharge Granted by Workman under Essential Error—Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58).]—Circumstances in which a receipt by a workman for payments of compensation, containing, as his employer contended, a final discharge of all future claims, held not to bar the workman from making further claims, in respect that it had been granted by the workman gratuitously and under essential error as to its effect.

MACANDREW *v.* GILHOOLEY, [1911] S. C. 418; [48 Sc. L. R. 511; 4 B. W. C. C. 370—Ct. of Sess.]

(f) Dependants.

See also Nos. 15, 16, *supra*.

33. Wife Living Apart from Husband and Supporting Herself Partial Dependency—Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.]—The applicant, who was married in 1881, left her husband in 1888 on account of his cruelty, and had never since lived with him. There was no agreement for separation; the applicant never made any application for maintenance against her husband, who never in fact paid the applicant anything for her own or her children’s support, and she supported herself by her own exertions. In 1910 the husband met with a fatal accident while employed at the respondents’ collieries. In a claim by the applicant for compensation under the Workmen’s

Compensation Act, 1906, in respect of her husband’s death:—

HELD—that the applicant was not dependent upon her husband and that the county court judge was wrong in making an award of compensation in her favour.

There is no presumption of law that a wife is dependent upon her husband’s earnings merely because of his legal obligation to maintain her, but the existence of this obligation, the probability that it will be discharged, either voluntarily or under compulsion, and the probability that the wife will ever enforce her right if the obligation be not discharged voluntarily, are all matters proper to be considered by the arbitrator in determining the question of fact whether or not the wife, at the time of her husband’s injury, looked to his earnings for her maintenance and support in whole or in part.

Decision of C. A. ([1911] 1 K. B. 250; 80 L. J. K. B. 539; 103 L. T. 622; 27 T. L. R. 90; 4 B. W. C. C. 49) reversed.

NEW MONCKTON COLLIERIES, LD. *v.* KEELING, [1911] A. C. 648; 80 L. J. K. B. 1205; 105 L. T. 337; 27 T. L. R. 551; 55 Sol. Jo. 687; 4 B. W. C. C. 332—H. L.]

34. Infant Children—Absence of Evidence of Dependency—No Legal Presumption—Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—The principle established by the decision of the House of Lords in *New Monckton Collieries, Ltd. v. Keeling (supra)*, that dependency within the meaning of the Workmen’s Compensation Act, 1906, is a question of fact, and that there is no legal presumption of dependency in the case of a wife, applies equally to the case of infant children.

Where, therefore, there was no evidence of dependency in fact of infant children on their father, a workman whose death had been caused by an accident within the Act, they not having in any way been maintained by him at the time of his death, they were held not to be entitled to compensation.

Briggs v. Mitchell (infra), approved.

LEE *v.* OWNER OF SHIP “BESSIE,” [1912] 1 [K. B. 83; [1911] W. N. 222; 105 L. T. 659—C. A.]

35. Partial Dependency—Principle on which Compensation Assessed—Father of Deceased Infant Workman—Wages Paid to Father—“Earnings”—Deduction of Cost of Maintenance—Pecuniary Value of Services Rendered—Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (a) (ii).]—The question how far a member of the family of a deceased workman was dependent on his earnings within the meaning of the Workmen’s Compensation Act, 1906, is a question of fact to be determined by the county court judge upon a consideration of all the circumstances of the case.

Main Colliery Co. v. Davies ([1900] A. C. 358) explained.

A workman, a boy fourteen years of age, was killed by an accident. His wages were 6s. 11d. a week. These wages were paid to the father and helped to maintain the family. The father

I. Liability of Master for Injury to Servant— *Continued.*

worked at a colliery and supplemented his wages by carrying on the trade of a barber on certain evenings and a part of Saturday. The deceased assisted his father in this trade, and the latter estimated the value of his services at 6s. a week. The county court judge held that the applicant was not a dependant or partial dependant, as 6s. 11d. a week was not more than sufficient to maintain the boy.

HELD—that the case must go back to the county court judge, as he was not precluded from finding the father to be a dependant, if the voluntary services which the son rendered reduced the cost of the boy's keep so that, in fact, all or part of the payments he made to the family fund were available for the family support.

Osmond v. Campbell and Harrison, Ltd. ([1905] 2 K. B. 852), if and so far as it holds that upon a question of partial dependency the county court judge is not entitled to deduct from the earnings of the deceased the cost of his maintenance, overruled.

Decision of C. A. ([1911] 1 K. B. 341; 80 L. J. K. B. 304; 103 L. T. 782; 4 B. W. C. C. 107) varied.

TAMWORTH COLLIERY CO., LD. v. HALL, [1911] [A. C. 665; 105 L. T. 449; 55 Sol. Jo. 615; 4 B. W. C. C. 313—H. L.

36. Illegitimate Child Living Apart from Mother—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 13.]—B. died on July 12th, 1910, as the result of an injury sustained by her in the course of her employment. On May 11th, 1910, she had been delivered of an illegitimate female child. Prior to the birth an arrangement had been made between her and Mrs. R. that the latter should take over the child when born, if a girl without payment and to be adopted as her own. The child was accordingly, on its birth, given over to Mrs. R., was named after her, and thereafter remained with her. B. had stated that she would "give the child a minding" every half-year; she had handed it over to Mrs. R. clothed, and had given the latter 3s. 6d., including materials for a shawl for the child. Apart from this, the child had been wholly maintained by Mrs. R. and her husband.

HELD—that the child was not a dependant of the mother in the sense of the Workmen's Compensation Act, 1906.

Decision of C. A. in *Keeling v. New Monckton Collieries, Ltd.* (since reversed, *vide* No. 33, *supra*), not followed.

BRIGGS v. MITCHELL, [1911] S. C. 705; 48 [Sc. L. R. 606; 4 B. W. C. C. 400—Ct. of Sess.

(g) Indemnity.

37. Negligence of Fellow Workman—Breach of Factory Regulations—Claim by Employers to be Indemnified by Fellow Workmen—"Some Person other than the Employer"—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 6.]—When

a workman has been injured by an accident arising out of and in the course of his employment, caused by negligence on the part of a fellow workman, and compensation has been duly paid to the injured workman by his employer, the latter is entitled to be indemnified by the fellow workman, as the words "some person other than the employer" in sect. 6 of the Workmen's Compensation Act, 1906, include a fellow workman of the injured workman.

The doctrine of common employment has no application as between fellow workmen.

Dietum of Pollock, C.B., in *Southcote v. Stanley* ((1856) 1 H. & N. 247, 250) disapproved.

Decision of C. A. (*sub nom. Gibson v. Dunkerley Bros., Lees and Sykes Third Parties*, 102 L. T. 587; 3 B. W. C. C. 345) affirmed.

LEES v. DUNKERLEY BROS., [1911] A. C. 5; [80 L. J. K. B. 135; 103 L. T. 467; 55 Sol. Jo. 44; 4 B. W. C. C. 115; 48 Sc. L. R. 724—H. L.

38. Employer and Third Party—Joint Tortfeasors—Compensation Recovered from Employer—Right of Employer to Indemnity—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 6.]—If an accident to a workman is caused by the negligence of his employers and of a third party, and the workman recovers compensation from his employers under the Workmen's Compensation Act, 1906, the employers are not entitled, under sect. 6 of the Act, to an indemnity from such third party.

CORY & SONS, LD. v. FRANCE, FENWICK & [Co., LD.], [1911] 1 K. B. 114; 80 L. J. K. B. 341; 103 L. T. 649; 27 T. L. R. 18; 55 Sol. Jo. 10; 11 Asp. M. C. 499—C. A.

(h) Jurisdiction.

See also Nos. 93, 101, 111, *infra*.

39. Defence of Public Authorities Protection Act, 1893—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—Section 1 of the Public Authorities Protection Act, 1893, has no application to proceedings for compensation under the Workmen's Compensation Act, 1906.

FRY v. CHELTENHAM CORPORATION, [1911] [W. N. 199; 81 L. J. K. B. 41; 105 L. T. 495; 28 T. L. R. 16; 56 Sol. Jo. 33—C. A.

40. Appeal from Court of Session—Construction of Statute—Reference to Medical Referee—Proceedings Consequential Thereon—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 16 (1); Sched. II. (17) (b).]—Sect. 16, subsect. 1, of the Workmen's Compensation Act, 1906, enacts—"This Act shall come into operation on the first day of July, 1907, but, except so far as it relates to references to medical referees and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act." Sched. II., par 17 (b), gives an appeal to the House of Lords from a decision of the Court of Session.

In an arbitration under the Workmen's Compensation Act, 1897, arising out of an accident which occurred on November 20th, 1906, the

I. Liability of Master for Injury to Servant— *Continued.*

arbitrator, with consent, remitted to a medical referee, and on his report, without further evidence, gave his decision reducing the compensation previously paid by a half. The employer appealed by stated case to the Court of Session, whose decision was that compensation should be ended.

HELD—that the House of Lords had no jurisdiction to entertain an appeal, as the words “proceedings consequential” on references to medical referees, would not cover the case.

MACKAY v. ROSIE, 49 Sc. L. R. 48; 56 Sol. Jo. [48—H. L. (Sc.).

(i) Medical Examination.

See also Nos. 121, 122, *infra*.

41. Reference by Registrar to Medical Referee—Certificate of Medical Referee—Conclusive Evidence—Evidence Tendered in Opposition to the Certificate—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (15).]—Employers applied to review payments under a registered agreement, putting in a certificate of a medical referee, obtained in accordance with Sched. I., par. 15, of the Workmen's Compensation Act, 1906, as proof that the workman was fit to work. The man tendered medical evidence in contradiction, but the county court judge rejected it, on the ground that the certificate was conclusive.

HELD—that the evidence was rightly rejected, the certificate being conclusive.

SAPCOTE & SONS v. HANCOX, 4 B. W. C. C. [181—C. A.

42. Conflict of Medical Evidence—Reference by Judge or Arbitrator to Medical Referee—Referee Reports Seaman Fit for Light Work on Land—Award on Basis of Total Incapacity—Regulations of June 24th, 1907, as to Duties and Remuneration of Medical Referees, r. 20—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (15).]—A seaman was injured, and claimed compensation. The medical evidence being conflicting, the county court judge referred the matter to a medical referee, under Sched. II., par. 15, of the Workmen's Compensation Act, 1906. He reported that the man was fit for light work on land with a truss. On this report the county court judge awarded compensation on the basis of total incapacity.

HELD—that the judge was entitled under the regulations so to refer the matter to a referee, and on the latter's report was entitled to make the award.

HENRICKSEN v. S.S. “SWANHILDA” (OWNERS), [4 B. W. C. C. 233—C. A.

43. Medical Referee—Jurisdiction to Refer Question at Instance of Deceased Workman's Dependents—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (15)—Regulations as to Medical Referees, rr. 22, 27.]—The jurisdiction of any committee, arbitrator, or judge, under the Workmen's Com-

pensation Act, 1906, Sched. II., par. 15, to submit to a medical referee for report any matter arising in the arbitration may be exercised notwithstanding that the workman in respect of whom the claim is brought is dead.

CAROLAN v. HARRINGTON, [1911] 2 K. B. 733; [80 L. J. K. B. 1153; 105 L. T. 271; 27 T. L. R. 486; 4 B. W. C. C. 253—C. A.

44. Reference by Arbitrator to Medical Referee—Report not Conclusive of Question before Arbitrator—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (15)—Regulations as to Medical Referees, June, 1907, r. 20.]—An arbitrator who has referred a question to a medical referee for a report under Sched. II., par. 15, of the Workmen's Compensation Act, 1906, is not bound to accept the medical referee's report as conclusive of the question which he, the arbitrator, has to decide.

JACKSON v. SCOTSTOUN ESTATE CO., [1911] [S. C. 564; 48 Sc. L. R. 440; 4 B. W. C. C. 381—Ct. of Sess.

45. Medical Referee—Earning Capacity—Finality of Report Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (15).]—In an application for review of compensation paid to a miner, who had received an injury resulting in the loss of an eye, a remit was made to a medical referee in terms of Sched. I., par. 15, of the Workmen's Compensation Act, 1906. The referee reported that the miner was “as fit as any other one-eyed man to resume his work under ground.” The miner having moved for a proof as to his earning capacity, the arbitrator refused the motion and ended the compensation, on the ground that the referee's report was final, and that it meant that the miner's incapacity had ceased.

HELD—that the report in question, though final as to the miner's physical condition, was not final as to his earning capacity, and case remitted to the arbitrator to allow a proof on that matter.

ARNOTT v. FIFE COAL CO., LD., [1911] S. C. [1029; 48 Sc. L. R. 828; 4 B. W. C. C. 361—Ct. of Sess.

46. Refusal to Attend at the Residence of Employer's Doctor—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (14).]—A workman refused to attend for medical examination at the residence of the employer's medical man, but offered to submit himself to examination at the surgery of his own doctor.

HELD, on the facts—that there was no refusal to submit within Sched. I. (14).

HARDING v. ROYAL MAIL STEAM PACKET CO. [4 B. W. C. C. 59—C. A.

47. Right of Workman to Require the Presence of his own Doctor—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (4).]—Apart from special circumstances in any particular case, a workman who is claiming compensation for injury by accident, and who is called upon by his employers under Sched. I., par. 4,

I. Liability of Master for Injury to Servant— (Continued).

of the Workmen's Compensation Act, 1906, to submit himself for medical examination, has no absolute right to insist upon his own medical adviser being present at such examination. In each case it is a question of fact for the arbitrator to say whether it is reasonable for the workman's medical adviser to be present at the examination.

Decision of the Court of Session ([1911] S.C. 403; 48 Sc. L.R., 296; 4 B. W. C. C. 363) affirmed (Lord Shaw dissenting).

MORGAN v. WILLIAM DIXON, LD., [1911] W. N. [220; 81 L. J. P. C. 57; 28 T. L. R. 64; 56 Sol. Jo. 88; 49 Sc. L. R. 45—H. L. (Sc.),

48. *Refusal to be Examined by Doctor named by Employer except in Solicitor's Office and Presence—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I. (14)*.—A solicitor's office is not in ordinary circumstances a proper place at which to hold a medical examination of a workman.

A workman in receipt of compensation under the Act was required by his employers to submit himself for examination by a certain duly qualified medical practitioner. The workman refused to do so unless the examination was at his solicitor's office or in his solicitor's presence. The employers repeated their request, but stated that the workman's medical adviser might attend at the examination. The workman again refused unless his conditions were complied with.

HELD, on these facts—that there was a refusal to submit to examination within *Sched. I. (14)*.

WARBY v. PLAISTOWE & CO., 4 B. W. C. C. 67 [—C. A.]

(j) On, in or about.

[No paragraphs in this vol. of the Digest.]

(k) Out of and in the Course of Employment.

See also I., 1 (a), *supra*.

49. *Cashier Robbed and Murdered while Carrying Employers' Money—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.—A cashier in the employment of colliery owners while taking, in the course of his duty, money from his employers' office to the colliery for the purpose of paying the men's wages was robbed and murdered.

HELD—that the cashier met his death by accident arising out of and in the course of his employment within the meaning of sect. 1 of the Workmen's Compensation Act, 1906.

NISBET v. RAYNE AND BURN, [1910] 2 K. B. [689; 80 L. J. K. B. 84; 103 L. T. 178; 26 T. L. R. 632; 54 Sol. Jo. 719; 3 B. W. C. C. 507—C. A.]

50. *Burden of Proof—Angina Pectoris—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).—The burden of proof that an accident arose out of and in the course of employment lies on the workman or his representatives, and can only be discharged by direct evidence or necessary inference from the facts. Where,

therefore, a workman while engaged on his work was taken ill and died of *angina pectoris*, which, according to the medical evidence, was of long standing, and might have produced death from several causes and not immediately following on any exertion, it was held that there was not sufficient evidence that the accident arose out of the employment.

HAWKINS v. POWELLS TILLERY STEAM COAL [Co., LD., [1911] 1 K. B. 988; 80 L. J. K. B. 769; 104 L. T. 365; 27 T. L. R. 282; 55 Sol. Jo. 329; 4 B. W. C. C. 178—C. A.]

51. *Burden of Proof—Unexplained Accident to Seaman—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.—An engineer on board a steamship left his berth one night saying that he would go on deck for a breath of fresh air. He was not seen again alive, and next day his dead body was found in the water close to the ship.

HELD (Lord Loreburn, L.C., and Lord James of Hereford dissenting)—that from these facts the Court could not draw the inference that the accident arose out of the employment, and therefore that the deceased man's widow was not entitled to compensation under the Workmen's Compensation Act, 1906.

Decision of C. A. ([1909] 2 K. B. 46; 78 L. J. K. B. 536; 100 L. T. 739; 25 T. L. R. 452; 53 Sol. Jo. 448; 11 Asp. M. C. 251; 2 B. W. C. C. 76) affirmed.

MARSHALL v. OWNERS OF S.S. "WILD ROSE," [1910] A. C. 486; 79 L. J. K. B. 912; 103 L. T. 114; 26 T. L. R. 608; 54 Sol. Jo. 678; 3 B. W. C. C. 514; 11 Asp. M. C. 409; 48 Sc. L. R. 701—H. L.]

52. *Burden of Proof—Captain of Ship going Ashore—Own Purposes or Ship's Business—Public Quay—Drowned while Waiting for Boat to Return to Ship—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).—The captain of a small coasting vessel went ashore in the evening, and, after going to an hotel not far from the quay, returned to the quay, and hailed a boat to come from the ship to take him aboard. While waiting for the boat, he fell into the water and was drowned. The evidence was equally consistent with his having gone ashore on ship's business or for his own purposes.

HELD—that the risk from which the man perished was not one specially connected with his employment, such as might be a risk from crossing a plank or a gangway leading to the ship or going in a boat to the ship, and that the applicant had not discharged the onus of proving that the accident arose out of and in the course of his employment.

Decision of C. A. (*sub nom.* Hewitt v. Owners of S.S. "Duchess," [1910] 1 K. B. 772; 79 L. J. K. B. 867; 102 L. T. 204; 26 T. L. R. 300; 54 Sol. Jo. 325; 3 B. W. C. C. 239) affirmed.

FLETCHER v. OWNERS OF S.S. "DUCHESS," [1911] A. C. 671; 81 L. J. K. B. 33; 55 Sol. Jo. 598; 4 B. W. C. C. 317; *sub nom.*

HEWITT v. OWNERS OF S.S. "DUCHESS," 105 L. T. 121—H. L.]

I. Liability of Master for Injury to Servant— Continued.

53. *Seaman Missed at Sea while on Duty—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—A seaman was on deck in pursuance of his duty. In the same watch he was missed and never seen again. It appeared that prior to going on deck for the purpose of keeping his watch he had been unwell and had complained of giddiness.

HELD—that there was evidence entitling the county court judge to come to the conclusion that the seaman met with an accident arising out of and in the course of his employment.

Decision of C. A. (102 L. T. 270; 26 T. L. R. 276; 3 B. W. C. C. 152) affirmed.

OWNERS OF S.S. "SWANSEA VALE" v. RICE. [104 L. T. 658; 27 T. L. R. 440; 55 Sol. Jo. 497; 4 B. W. C. C. 298; 48 Sc. L. R. 1095—H. L.]

54. *Burden of Proof—Fatal Accident—Evidence—Inference—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).]—A brakeman, who was in charge of a train that was running buffer to buffer with and pushing another train towards some siding points, endeavoured to climb from the truck in which he was riding on to the brake van of the first train, and in so doing fell and was killed. The points would have had to be operated by one of the brakemen.

HELD by C. A. (Buckley, L.J., dissenting) and by H. L. (Lord Atkinson dissenting)—that there was evidence from which the arbitrator could infer that the accident arose "out of and in the course of the employment" and that the dependants were entitled to compensation.

Per Cozens-Hardy, M.R.—In considering what is sufficient evidence in a fatal accident to justify an inference that the accident has arisen "out of and in the course of the employment" a distinction must be drawn between cases where death occurs at a time when the workman is engaged in his employer's work and cases where death occurs at a time when the workman is free, without any breach of contract, to do what he pleases on his own account.

Per Moulton, L.J.—Where the workman is engaged in his employer's work up to the time of his death, and the last acts known about him are consistent with the continuance of that work, the onus is on those who allege a cessation of his work for his employer to prove it.

Decision of C. A. ([1911] 1 K. B. 1036; 80 L. J. K. B. 731; 104 L. T. 373; 4 B. W. C. C. 209) affirmed.

R. EVANS & CO. v. ASTLEY, [1911] A. C. 674; [80 L. J. K. B. 1177; 105 L. T. 385; 27 T. L. R. 557; 4 B. W. C. C. 319—H. L.]

55. *Burden of Proof—Power to draw Inference as to Cause of Accident—Workmen's Compensation Act, 1906*, s. 1 (1).]—A workman who had undergone an operation returned to work before the operation wound was com-

pletely healed, with instructions not to strain himself. He worked at the lever of a machine. A fellow workman, noticing that the machine was stopped, looked for the man, and saw that he was talking to the foreman some yards away. It was then seen that blood was flowing freely from the operation wound and soaking into his boots. Septic poisoning followed, and the man died.

HELD—that there was evidence on which the county court judge could draw an inference that the accident arose out of the employment.

GROVES v. BURROUGHS AND WATTS, LD., 4 [B. W. C. C. 185—C. A.]

56. *Seaman Going Ashore—Return to Ship—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—A sailor, having been on shore with leave, while returning to the quay fell into the water and was drowned. The access to the ship from the quay was by a gangway which was properly lighted. There was no evidence whether he had or had not reached the gangway when he fell.

HELD—that the accident arose in the course of the deceased's employment, but not out of the employment.

Decision of C. A. (*infra*) affirmed.

KITCHENHAM v. OWNERS OF S.S. "JOHANNESBURG," [1911] A. C. 417; 80 L. J. K. B. 1102; 105 L. T. 118; 27 T. L. R. 504; 55 Sol. Jo. 599; 4 B. W. C. C. 311—H. L.]

57. *Seaman Going Ashore—Course of the Employment—Out of the Employment—Risks Incidental to Employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—By going on shore with leave a seaman does not interrupt the course of his employment, but any accident that occurs during the period of his being on shore is generally, if not necessarily, due to a danger to which he is exposed as a member of the public, and not as one of the crew of the ship, and therefore is one which does not arise "out of his employment." But if, whether in his hours of leisure or not, it becomes necessary for him in fulfilment of his employment to get on board his vessel, an accident which occurs in his doing so is normally an accident arising out of his employment, because it is due to a danger incidental to his service in that ship. The return to the ship is in the course of his employment, but the risks do not become risks arising out of his employment until he has to do something specifically connected with his employment on the ship. Thus, if the risk is one due to the means of access to the ship the accident is rightly said to arise out of his employment; but if the accident is shown to arise from something not specifically connected with the ship, it cannot be said to arise out of his employment.

Moore v. Manchester Liners, LD. ([1910] A. C. 498) discussed.

KITCHENHAM v. OWNERS OF S.S. "JOHANNESBURG"; LEACH v. OAKLEY STREET & CO., [1911] 1 K. B. 523; 80 L. J. K. B. 313; 103 L. T. 778; 27 T. L. R. 124; 55 Sol. Jo. 124; 4 B. W. C. C. 91—C. A.]

AFFIRMED ON APPEAL. See S. C., *supra*.

I. Liability of Master for Injury to Servant— Continued.

58. Engineer Returning to Ship—Dangerous Manner of Reaching Ship—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—A ship's engineer who was on shore for a legitimate purpose, in order to get back to his ship, then at anchor about 100 yards off the shore, got into a six-oared lifeboat, 27 feet in length, which he found lying at the jetty, and which in ordinary circumstances would have been manned by six men, each with an oar. He had in it its rudder but no oars. He attempted to reach the ship by paddling with the rudder, trusting to the wind and tide, which were both in his favour, carrying him towards the ship. He was carried out to sea and was drowned.

HELD—that the accident did not arise out of and in the course of the deceased's employment. **HALVORSEN v. SALVESEN**, 49 Sc. L. R. 27—[Ct. of Sess.

59. Seaman Returning on Board Ship—Fall into Water from Gangway Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—A sailor returning on board his ship after a trip on shore unconnected with his employment fell into the water from steps leading from the gangway of which they formed part to the deck.

HELD—that this was not an accident arising out of the employment.

HYNDMAN v. CRAIG & Co., 45 I. L. T. 11; 4 [B. W. C. C. 438—C. A., Ireland.

60. Seaman Returning on Board Ship—Jumping from Pier to Vessel—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A seaman when off duty left his vessel on his own business. The vessel was then alongside the quay, but on his return two hours afterwards it was some five or six feet from the pier, the top of the rail being about three feet lower than the quay. The vessel had no gangway, but a ladder was used for getting on board. On his arrival at the pier the seaman, seeing no ladder, hailed, and having got no answer he jumped from the pier to the vessel, with the result that his leg struck against the rail and was permanently injured.

HELD (reversing the county court judge)—that the accident arose out of and in the course of the employment.

KEARON v. KEARON, 45 I. L. T. 96; 4 B. W. [C. C. 435—C. A., Ireland.

61. Breach of Employers' Regulations—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 2 (c).]—A workman proceeding to his home by a route that he was permitted to use in going to and from his work committed a breach of his employers' regulations by attempting to get on a moving tram, in order to be carried up an incline which was on the way to his home. He fell and was killed.

HELD—that the accident did not arise out of and in the course of his employment.

Decision of C. A. (102 L. T. 632; 3 B. W. C. C. 339) affirmed.

POPE v. HILL'S PLYMOUTH CO., LD., 132 L. T. [Jo. 31—H. L.

62. Sphere of Employment—Serious and Wilful Misconduct—Death from Accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1) (c).]—A workman, who goes for the purposes of his employment into a place which he has been expressly forbidden to enter and there meets with a fatal accident, may be guilty of serious and wilful misconduct within the Workmen's Compensation Act, 1906, but is not acting outside the sphere of his employment so as to deprive his dependants of their right to compensation under the Act.

HARDING v. BRYNNDU COLLIERY CO., LD., [1911] 2 K. B. 747; 80 L. J. K. B. 1052; 105 L. T. 55; 27 T. L. R. 500; 55 Sol. Jo. 599; 4 B. W. C. C. 269—C. A.

See S. C., No. 115, *infra*.

63. Sphere of Employment—Working in Forbidden Area—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1) (c).]—*Per* Cozens-Hardy, M.R.—The learned county court judge in his judgment says this:

"The question of law is whether, the man being authorised to hew at the face of the coal where it was hard and having gone to the wall side to hew where it was soft, his relatives are outside the Act. It is said he was never employed to hew coal there at all and that to get coal there was improper, but in my opinion it was 'within the scope of his employment.'"

The learned judge states the proposition of law, and I accept that as an accurate statement.

WEIGHILL v. SOUTH HETTON COAL CO., [1911] [2 K. B. 757, n.—C. A.

64. Sphere of Employment—Workman Found Dead where he had no Business to be—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A workman who was proceeding with others under orders from one part of the works to another stopped, saying that he was going to ease himself. He was found dead in a hoist where it was unreasonable for him to go, and where he could not have gone by accident.

HELD—that the accident did not arise out of the employment.

ROSE v. MORRISON AND MASON, LD., 80 L. J. [K. B. 1103; 105 L. T. 2; 4 B. W. C. C. 277—C. A.

65. Sphere of Employment—Disobedience of Order by Entering Forbidden Area—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1) (c).]—C., a drawer employed in a coal mine, along with a companion S., was working in a level from which they were driving an "upset." On the morning of the day of the accident the fireman discovered an outbreak of gas in the "upset," and accordingly placed a board across the entrance, chalking upon it, "No road up here," such a board or fence being the usual mode of warning persons that it was dangerous to enter the place so fenced. Both C. and S. understood what the putting up of the board meant, and

I. Liability of Master for Injury to Servant— Continued.

that it was dangerous to work in the "upset." C. and S. were working that morning at a different part of the mine. C. required a pick, and, knowing that S. had left one in the "upset," went to get it. S., who had been warned by the fireman earlier in the day not to go into the "upset" for the pick, but to get one from another place which he named, called out to C. that he was to go to this other place, but C. did not apparently hear what he said. C. entered the "upset," passing over or under the fence with a naked light in his cap, an explosion took place, and he was killed.

HELD—that as at the time of the accident C. was acting within the sphere of his employment, the accident was one arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1906.

CONWAY v. PUMPHERSTON OIL CO., LD., [1911]
[S. C. 660; 48 Sc. L. R. 632; 4 B. W. C. C. 392—Ct. of Sess.]

66. *Miner—Shot-firing Contrary to Rules—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).—The rules of a pit, worked in terms of the Explosives in Coal Mines Order of February 21st, 1910, provided that explosives capable only of being fired by detonators should be used; that the detonators should be securely kept and issued only to shot-firers; and that every charge should be fired by a competent person appointed in writing to perform the duty. On the occasion in question, after the shot-firer had left the pit, a miner who had a detonator in his possession—which, however, he had not received from the shot-firer—started to fire a shot. In the course of the operation an explosion occurred whereby he was killed.

HELD—that the accident did not arise out of and in the course of the deceased's employment within the meaning of the Workmen's Compensation Act, 1906.

KERR v. WILLIAM BAIRD & CO., LD., [1911]
[S. C. 701; 48 Sc. L. R. 646; 4 B. W. C. C. 397—Ct. of Sess.]

67. *Disobedience of Order—Engineer on Steamship—Asphyxiation by Fumes of Stove in Cabin—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.—While the respondents' steamship was lying in port in the Black Sea in February, 1911, the second engineer, on account of the intensity of the cold, rigged up a stove in his cabin. He had been allowed by the chief engineer to use the stove during the daytime, but was forbidden to use it at night, as it was dangerous. On February 9 there was no fire in the stove at 11 p.m., but apparently the second engineer lit the fire at some period of the night, and he was found dead the next morning, having been asphyxiated by the fumes of the fire. On an application by his dependant for compensation under the Workmen's Compensation Act, 1906, the county court judge held that the accident arose out of and in the course of the deceased's

employment; he accordingly made an award of compensation.

HELD (Cozens-Hardy, M.R., doubting)—that there was evidence upon which the county court judge could find as he did.

EDMUNDS v. OWNERS OF S.S. "PETERSTON,"
[28 T. L. R. 18—C. A.]

68. *Disobedience to Orders by Using Hoist—Notice—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).—A message boy who was employed in delivering fish at a kitchen situated on the third floor of an infirmary was injured while making his way from the ground floor to the third floor by means of a hoist which he had entered and caused to ascend. There was a notice at the side of the hoist to the effect that it was only to be used by servants of the institution, and worked only by those specially authorised by the directors, but it was not proved that the boy had read the notice, or had his attention directed to it, though it was proved that he had been cautioned against using the hoist.

HELD—that the accident did not arise out of and in the course of his employment.

McDAID v. STEEL, [1911] S. C. 859; 48
[Sc. L. R. 765; 4 B. W. C. C. 412—Ct. of Sess.]

69. *Disobedience of Order—Inference from Proved Facts—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).—T., a miner, whose duty it was to work at a certain place in a mine, was informed by the fireman that he could work at another place called X. till ten o'clock that morning, but that he was not to remain there longer, as after that hour blasting operations would commence from the opposite side, from which a new passage was being opened up. T. worked at X. till about ten, when he left and went to his regular working-place, about 65 feet distant, where he remained till eleven, when he was left there working by his mate. About 11.45 a shot was fired opposite X. T. was killed by this shot, and his body was found among the debris at X. T. did not require to pass X. to get to the pit bottom, and the order to be away from X. was in force when the accident occurred. It was not proved what led T. to go to X., but it might have been to fetch a pick which had been left there by his mate. T.'s representatives having claimed compensation, the arbiter assized the defenders, holding that T. had not been injured in the course of his employment.

HELD—that there was evidence on which the arbiter might reasonably find as he did, and that the Court therefore could not interfere with his decision.

TRAYNOR v. R. ADDIE & SONS, 48 Sc. L. R.
[820; 4 B. W. C. C. 357—Ct. of Sess.]

70. *Disobedience of Express Order—Brakesman Riding on Lorry—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).—A carter, employed as a brakesman, had as his duty to walk continuously at the rear of a lorry, ready to apply the brakes when directed

I. Liability of Master for Injury to Servant— *Continued.*

to do so by the driver. He got upon the lorry, which he was expressly forbidden to do, and took a seat in front by the driver, with whom he began to talk on matters which had nothing to do with the work on hand. While he was in that position the driver called upon him to put on the brakes. In jumping off the lorry, with the intention of obeying the order, he fell and was injured.

HELD—that the facts justified a finding that the accident did not arise out of his employment in the sense of the Workmen's Compensation Act, 1906.

REVIE *v.* CUMMING, [1911] S. C. 1032; 48 [Sc. L. R. 831—Ct. of Sess.]

71. Prohibited Act—Risk not Incidental to Employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—Where one of two flagmen, whose duty it was alternately to walk in front of a traction engine and, when not in front, to ride in a van at the rear, got up on the draw-bar on which he had been warned not to go, but on which he and others had sometimes ridden to the knowledge of the employer, and, having slipped, had his foot crushed by the traction engine;—

HELD—that the accident did not arise out of the employment.

Brice v. Lloyd ([1909] 2 K. B. 804) followed.

McKEOWN *v.* McMURRAY, 45 I. L. T. 190—[C. A., Ireland]

72. Accident to Workman on his way to Work—Footpath on Detached Land belonging to Employers—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A workman was accustomed to go to the works where he was employed by a footpath which ran over vacant land belonging to his employers, and afterwards along a railway line. While on his way to work he was injured by slipping on some ice on the footpath over the vacant land, a quarter of a mile from the place where he had to work.

HELD—that the accident did not arise out of and in the course of the employment.

GILMOUR *v.* DORMAN, LONG & Co., 105 L. T. [54; 4 B. W. C. C. 279—C. A.]

73. Fall while on the Way to Work—Use of Path over Employer's Land—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—The respondents allowed their workmen to use a short cut over land belonging to them on their way to and from their work, but there was no contract on the part of the employers to provide this mode of access to their works, and there was no obligation on the part of the workmen to use it. A workman fell while using this path on his way to work and was injured.

HELD—that the accident did not arise out of or in the course of the workman's employment within the meaning of the Workmen's Compensation Act, 1906.

Decision of C. A. (4 B. W. C. C. 89) affirmed.

WALTERS *v.* STAVELEY COAL AND IRON CO., 105 [L. T. 119; 55 Sol. Jo. 579; 4 B. W. C. C. 303—H. L.]

74. Farm Labourer Going from One Farm to Another—Using Employers' Cart—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—The applicant was employed on different farms belonging to the respondent. Having finished his work at one farm, the applicant was proceeding to another, about two miles distant by road, for the purpose of receiving his day's pay and to inquire about the work for the next day. Finding an empty cart belonging to the respondent returning to the same farm, the applicant attempted to get into it, and while so doing an accident occurred to him. The respondent's workmen not unfrequently returned in such an empty cart, and this fact was known to the respondent.

HELD—that it was no part of the applicant's contract of service that he should travel to his employer's farm by a cart, whereby he added unnecessarily to the risk of his employer; and that therefore he was not entitled to compensation under the Workmen's Compensation Act, 1906.

PARKER *v.* POUT, 105 L. T. 493—C. A.

75. Work Actually Over—Workman on Employers' Premises to Receive Wages Due—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—The applicant, who had been working in the respondents' mill, was told on Wednesday, July 6th, 1910, that there was no more work for her, and she then left. She returned to the mill on Friday, July 8th, in order to get the wages due to her up to the Wednesday, it being the practice of the respondents to pay wages each Friday up to the preceding Wednesday. While returning from the pay office in the mill on the Friday she met with an accident, in respect of which she claimed compensation under the Workmen's Compensation Act, 1906.

HELD (Buckley, L.J., dissenting)—that the contractual obligations of the respondents were not terminated or satisfied until the wages due on the Wednesday were paid on the Friday; that it was the applicant's duty to go to the mill on the Friday to receive her wages; that her employment, although in a sense it came to an end on the Wednesday, continued till the Friday because of the obligations of the respondents arising out of the course of the employment; and, therefore, that the accident arose out of and in the course of the applicant's employment.

Per Cozens-Hardy, M.R.—The general principle that a debtor ought to go to his creditor and pay him has no application to large employers of labour who have a regular pay day and a regular pay office.

RILEY *v.* W. HOLLAND & SONS, LD., [1911] [1 K. B. 1029; 80 L. J. K. B. 814; 104 L. T. 371; 27 T. L. R. 327; 4 B. W. C. C. 155—C. A.]

I. Liability of Master for Injury to Servant— Continued.

76. Accident on Employer's Premises after Termination of Work—Workman Returning to Settle Dispute with Employers—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A collier received his pay-note on a Saturday. Being dissatisfied with the amount, he spoke to the manager, who referred him to the under-manager. The latter could not be seen till Monday. The collier came on Monday at mid-day, not intending to resume work unless the dispute was settled in his favour, and saw the under-manager, who did not give in. The collier then proceeded to leave, but was knocked down by a coal waggon and killed.

HELD—that the county court judge was justified in finding that the accident arose neither out of nor in the course of the employment.

PHILLIPS v. WILLIAMS, 4 B. W. C. C. 143—
[C. A.]

77. Work Finished—Miner Riding on Hutch—Disobedience of Order—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A brusher in a mine who had finished his work for the day jumped on the last of three hutches which were being taken by a pony to the pit bottom. On the way he was knocked off the hutch by his head coming into contact with two crowns which were below the ordinary pit level, and he sustained serious and permanent injury. A special rule, of which the injured man was cognisant, forbade miners from riding on the hutches.

HELD—that the injury was not caused by an accident "arising out of" the workman's employment within the meaning of the Workmen's Compensation Act, 1906.

KANE v. MERRY AND CUNNINGHAME, LD.,
[1911] S. C. 533; 48 Sc. L. R. 430; 4
B. W. C. C. 379—Ct. of Sess.

78. Workman Leaving Work for Necessary Purpose—Going to Unsuitable Place Instead of Place Provided—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A workman while on duty attending to boilers at a colliery left his work for a necessary purpose, and instead of going to the nearest w.-c. went into a confined space underneath a table engine, where he accidentally plunged his foot into boiling water in a cistern, which, sunk in the ground underneath the engine, was used to receive the escape hot water from the engine.

HELD—that the accident did not arise out of and in the course of the employment within the meaning of sect. 1 (1) of the Workmen's Compensation Act, 1906.

THOMSON v. FLEMINGTON COAL CO., LD., [1911]
[S. C. 823; 48 Sc. L. R. 740; 4 B. W.
C. C. 406—Ct. of Sess.]

79. Taking Shorter Route along Railway Line—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A canal overseer

in the employment of a railway company, in returning to his office on the canal from a railway station where he had been in the course of his duties, went along the railway line, which was shorter, instead of going by road. While walking along the line he was knocked down by a train and received injuries from which he died.

HELD—that though the accident arose in the course of the deceased's employment, it had not arisen out of his employment.

M'LAREN v. CALEDONIAN RY. CO., [1911] S. C.
[1075; 48 Sc. L. R. 885—Ct. of Sess.]

80. Boy in Mine Riding on Tub Contrary to Rule—Fatal Injury—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1), (2) (c).]—A boy in a colliery in order to get to the place where he was about to work got into an empty tub which was being hauled on an endless chain, and while so riding in the tub received fatal injuries through his head striking the roof. A rule of the colliery prohibited boys in the mine from riding in empty tubs. There was a notice to this effect in the colliery, and fines were inflicted on boys found breaking the rule. But the boys frequently did ride in the tubs when they could do so without being caught.

HELD—that the accident did not arise out of the boy's employment.

Decision of C. A. ([1910] W. N. 248; 4 B. W. C. C. 43) affirmed.

BARNES v. NUNNERY COLLIERY CO., LD.,
[1911] W. N. 251; 56 Sol. Jo. 159—H. L.

81. Accident arising through Larking—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A lad, set to clean a machine at rest, was larking with another lad, the consequence of which was that he accidentally started the machine, thereby injuring himself.

HELD—that the accident did not arise out of the employment.

Furniss v. Gartside & Co., LD. ([1910]. 3
B. W. C. C. 411) followed.

COLE v. EVANS, SON, LESCHNER AND WEBB,
[LD., 4 B. W. C. C. 138—C. A.]

82. Frost-bite—Journeyman Baker Driving Cart on Rounds—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—The applicant was a journeyman baker, whose duty it was to drive his employer's cart and deliver bread to customers. On a very cold day, while out with the cart, his right hand, from which he had taken off the glove in order to give change, was frost-bitten, and this incapacitated him for work.

HELD—that there was nothing in the evidence to disentitle the county court judge from finding as he did, that the appellant was not by reason of his employment specially affected by the severity of the weather and therefore had not suffered injury by accident arising out of his employment.

Decision of C. A. ([1911] 1 K. B. 351; 80 L. J. K. B. 526; 103 L. T. 693; 27 T. L. R. 121; 55 Sol. Jo. 107; 4 B. W. C. C. 32) affirmed.

WARNER v. COUCHMAN, [1911] W. N. 220; 81
[L. J. K. B. 45; 28 T. L. R. 58; 56 Sol. Jo. 70
—H. L.]

I. Liability of Master for Injury to Servant— Continued.

83. Frost-bite—Climate—No Special Exposure—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A seaman at work on his ship at Halifax, N.S., sustained frost-bite. The county court judge found that the workman had not proved that the frost-bite was due to any particular circumstance of the employment, nor that he had been exposed to more risk of frost-bite than is usual in winter at Halifax.

HELD—that the accident did not arise out of the employment.

KAREMAKER v. OWNERS OF S.S. "CORSIKAN,"
[4 B. W. C. C. 295—C. A.]

84. Sunstroke—Exposure on Board Ship in Foreign Port—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—While a ship on which the applicant was an officer was in a West Indian port, loading cargo, the applicant was on May 31st, 1910, posted on a portion of the steel deck, which was unprotected by an awning, and he had to lean over a latchway from 6 a.m. to 11 a.m. to superintend the work. At 11 a.m. he was taken ill with sunstroke, which resulted in injury to his eyes. In a claim for compensation under the Workmen's Compensation Act, 1906, the county court judge made an award in favour of the applicant on the ground that he had been subjected to an abnormal risk in the course of his employment.

HELD—that there were facts on which the county court judge could come to that conclusion.

DAVIES v. GILLESPIE, 105 L. T. 494; 28 T. L. R. [6; 56 Sol. Jo. 11—C. A.]

85. Death Caused by Wasp Sting—Statement by Deceased to Doctor as to Cause of Injury—Admissibility—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—A. was engaged in threshing operations on his employer's farm. While the work was in progress some of the other workmen saw wasps upon the drum, and at the back of the machine close to A. The next day A. had a swollen leg, and complained of pain, and some days later he died from poisoning set up by a wasp sting. On an application for compensation by A.'s widow:—

HELD—that there was no evidence that the injury to A. arose out of his employment.

In the proceedings for compensation the county court judge admitted evidence of a statement by A. to his doctor as to the cause and occasion of the accident.

HELD—that this evidence was improperly admitted.

Observations of Cherry, L.J., in *Wright v. Kerrigan* (*infra*) disapproved.

AMYS v. BARTON, [1912] 1 K. B. 40; [1911] [W. N. 205; 81 L. J. K. B. 65; 105 L. T. 619; 28 T. L. R. 29—C. A.]

86. Blood Poisoning from Scratch—Medical Evidence—Inference—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—A workman employed on the night shift in the defendants'

colliery went to his work on the night of Friday, December 9th, about 11 o'clock, and returned at 7.30 the next morning. On his return there was a red patch on his right arm, and also a scratch on his thumb. The workman died on December 21st of blood poisoning, which, according to the medical evidence, resulted from the scratch on the thumb. Evidence was given that there had been some fall of stone on the man while he was working on the Friday night. The medical testimony, however, was to the effect that the red patch on the arm was caused by inflammation from the scratch on the thumb, and that no case had ever been known in which inflammation had appeared earlier than twelve hours after the introduction of the septic poisoning. In a claim for compensation by the workman's widow the county court judge thought there was no satisfactory direct evidence that the injury through which septic poisoning was caused was received at the colliery, but he was, however, of opinion, on the authority of *Mitchell v. Glamorgan Colliery Co.* ([1907] 23 T. L. R. 588), that he was entitled to infer that the probabilities were that the injury was received at the colliery, and he awarded compensation.

HELD—that there was no evidence, and nothing in the case of *Mitchell v. Glamorganshire Colliery Co.* (*supra*), which entitled the county court judge to draw the inference which he did.

JENKINS v. STANDARD COLLIERY CO., 28 T. L. R. [7—C. A.]

87. Canvasser Killed in Street while Cycling—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.]—A canvasser and collector in the service of the respondents, while going his rounds on a bicycle, was killed by an electric car. For some nine months before the accident he had been in the habit of riding a bicycle while going his rounds, and this practice was known to and not forbidden by the respondents. The respondents, however, did not require the canvasser to use a bicycle in going his rounds.

HELD—that the accident to the canvasser arose out of and in the course of his employment, and that his widow was entitled to compensation under the Workmen's Compensation Act, 1906.

M'Neice v. Singer Sewing Machine Co., Ltd. (*infra*) approved.

PIERCE v. PROVIDENT CLOTHING AND SUPPLY [Co., Ltd., [1911] 1 K. B. 997; 80 L. J. K. B. 831; 104 L. T. 473; 27 T. L. R. 299; 55 Sol. Jo. 363; 4 B. W. C. C. 242—C. A.]

88. Street Accident to Salesman in the Course of his Employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).]—A salesman and collector, while riding in a street upon a bicycle, in the course of his employment, was kicked on the knee by a passing horse and injured.

HELD—that the injury was caused by an accident "arising out of" his employment.

M'NEICE v. SINGER SEWING MACHINE CO., LD.
[1911] S. C. 13; 48 Sc. L. R. 15; 4 B. W. C. C. 351—Ct. of Sess.]

I. Liability of Master for Injury to Servant— Continued.

89. Insurance Agent—Fall down Stair—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).—An insurance agent, whose duties consisted in going from door to door collecting premiums, while in the course of his employment fell down a stair and sustained severe injuries.

HELD—that the accident arose out of his employment in the sense of the Workmen's Compensation Act, 1906.

REFUGE ASSURANCE CO., LD. *v.* MILLAR, 49 [Sc. L. R. 67—Ct. of Sess.

90. Recovering Dropped Pipe while Accompanying Hauled Waggon—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).—A workman was employed as labourer in connection with loading and unloading waggons, and accompanying them while being hauled by a traction engine from one quarry to another. While sitting on a waggon which was being so hauled, he dropped his pipe, and in attempting to get down to recover it he lost his balance and fell in front of the wheels of the waggon, which went over his left leg, fatally injuring him.

HELD—that the accident arose out of and in the course of the employment.

M'LAUCHLAN *v.* ANDERSON, [1911] S. C. 529; [48 Sc. L. R. 349; 4 B. W. C. C. 376—Ct. of Sess.

91. No Direct Evidence—Statement by Deceased to his Doctor—Admissibility—Inference—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).—A man, aged seventy, employed at an undertaker's, and part of whose duty was lifting coffins, went to his work apparently well, and on his return complained to his wife of having been hurt that day; there were marks upon his side and chest, and his leg was swollen. He died about a week afterwards, the cause of death being pneumonia supervening on pleurisy caused by injury. There was no direct evidence showing that an accident had been sustained by the deceased in the course of his employment. He stated to the doctor who attended him that the pain of which he complained was the result of accident, and the doctor informed the employer that "deceased said that he met with an accident by the moving of a coffin."

HELD—that there was sufficient evidence to justify the inference that an accident causing the injury from which he died had happened to the deceased arising out of and in the course of the employment.

Per Cherry, L.J.—Statements made in the absence of an employer by a deceased workman as to his bodily injuries and their immediate cause are admissible. [*But see* *Amys v. Barton*, No. 85, *supra*.]

WRIGHT *v.* KERRIGAN, [1911] 2 I. R. 301; [45 I. L. T. 82; 4 B. W. C. C. 432—C. A., Ireland.

(1) Practice.

(1) Appeals and New Trials.

92. Question of Fact—Findings by County Court Judge—Workmen's Compensation Act, 1906

(6 Edw. 7, c. 58), *Sched. II.* (4).—The findings of fact by a county court judge sitting as an arbitrator under the Workmen's Compensation Act, 1906, cannot be set aside if there was evidence to support the findings. The question whether there was evidence is a question of law.

SMITH *v.* GENERAL MOTOR CAB CO., LD., [1911] A. C. 188; 80, L. J. K. B. 839; 105 L. T. 113; 27 T. L. R. 370; 55 Sol. Jo. 439; 4 B. W. C. C. 249—H. L.

93. Refusal of County Court Judge to Entertain Jurisdiction—Appeal—Divisional Court or Court of Appeal—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), *Sched. II.* (1), (4).—In a case under the Workmen's Compensation Act, 1897, the injured workman was awarded full compensation during incapacity by a representative committee. Later the payments were reduced by agreement to 1*l.* per week. On an application by the workman to the county court for a review and increase of the 1*l.* per week, the county court judge declined to entertain jurisdiction, and refused to hear the application.

HELD—that (under the Act of 1897) an appeal from his refusal to entertain jurisdiction lay to the Divisional Court and not to the Court of Appeal.

HOWARTH *v.* SIR B. SAMUELSON & CO., 104 [L. T. 907; 4 B. W. C. C. 287—C. A.

See S. C. in Div. Ct., *sub nom.* *R. v. Templer*, No. 111, *infra*.

94. Order by County Court Judge for Detention of Ship—Appeal—Divisional Court or Court of Appeal—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 11, *Sched. II.* (4).—An appeal lies to the Divisional Court and not to the Court of Appeal from an order for the detention of a ship made by a county court judge under sect. 11 of the Workmen's Compensation Act, 1906; for such order is made by him in his judicial character, and not as an arbitrator under the Act, and therefore is not covered by *Sched. II.*, par. 4, of the Act.

PANAGOTIS *v.* OWNERS OF SHIP "PONTIAC," [1912] 1 K. B. 74; [1911] W. N. 221; 28 T. L. R. 63; 56 Sol. Jo. 71—C. A.

(2) Costs.

[No paragraphs in this vol. of the Digest.]

(3) Arbitration.

See also No. 11, and I., 1 (i), *supra*.

95. Evidence—Admissibility—Statement by Deceased Workman to Doctor as to Cause of Injury.—In proceedings for compensation for the death of a workman statements by the deceased workman to his doctor as to the cause of his injuries are not admissible.

Observations of Cherry, L.J., in *Wright v. Kerrigan*, [1911] 2 I. R. 301, disapproved.

AMYS *v.* BARTON, [1912] 1 K. B. 40; [1911] [W. N. 205; 81 L. J. K. B. 65; 105 L. T. 619; 28 T. L. R. 29—C. A.

I. Liability of Master for Injury to Servant— *Continued.*

96. Evidence—Delegation of Duty by County Court Judge to Registrar.—A county court judge sitting as arbitrator under the Workmen's Compensation Act ought not to delegate to the registrar the duty of taking evidence.

EDMUNDS *v.* OWNERS OF S.S. "PETERSTON." [28 T. L. R. 18—C. A.]

(m) Redemption of Payment.

See also No. 101, *infra*.

97. Assessment of Lump Sum—"Where the Incapacity is Permanent"—*Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), *Sched. I.* (17).—On an application by employers under *Sched. I.*, par. 17, of the Workmen's Compensation Act, 1906, to redeem a weekly payment, the arbitrator cannot make an order for redemption on the actuarial basis provided by the first part of the paragraph without arriving at the conclusion upon evidence that the workmen's incapacity—total or partial—is permanent. If the workmen's condition is stable, the incapacity is "permanent" within the meaning of that expression in the paragraph.

National Telephone Co. v. Smith ((1909) 46 Sc. L. R. 988) not followed.

CALICO PRINTERS ASSOCIATION, LD. *v.* HIG-
[HAM, [1912] 1 K. B. 93; [1911] W. N. 221;
28 T. L. R. 53; 56 Sol. Jo. 89—C. A.]

98. Payment of Lump Sum—Principle of Computation—*Workmen's Compensation Act*, 1897 (60 & 61 Vict. c. 37), s. 1, *Sched. I.* (13).—In computing the lump sum that may be ordered to be paid by an employer, pursuant to sect. 13 of the 1st Schedule to the Workmen's Compensation Act, 1897, in redemption of the liability for a weekly payment that has been continued to a workman for not less than six months, the county court judge has not a free hand in the matter, but he must proceed on a correct principle, taking into consideration, in determining the present value of future weekly payments, the probability of the workman's recovery, and of his capacity for work either wholly or partially, likewise his age and state of his health, so that his expectation in life may be ascertained.

VICTOR MILLS, LD. *v.* SHACKLETON, [1912]
[1 K. B. 22; [1911] W. N. 197; 81 L. J. K. B.
34; 105 L. T. 613—C. A.]

99. Question of Adequacy referred to County Court Judge—Jurisdiction of Judge—*Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), *Sched. II.* (9) (a).—An agreement for the redemption of a weekly payment by a lump sum was sent to a registrar to record. It appearing inadequate, the registrar referred it to the county court judge. The judge, holding that the sole question for him to decide was whether the agreement had in fact been made, declined to decide the question of adequacy.

HELD—that the case must go back for the question of adequacy to be decided.

SHIP "SEGURA" (OWNERS) *v.* BLAMPY, 4
[B. W. C. C. 192—C. A.]

(n) Registration of Agreement.

100. Payment on Production of Certificate from Medical Man—Implied Agreement—*Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), *Sched. II.* (9).—On August 10th, 1909, a workman met with an accident, and his employers intimated that they would pay him half his weekly wages on production every fortnight of a certificate from the medical man attached to the works that he was still totally disabled. More than a year afterwards the man failed to produce this certificate, and in January, 1911, applied, under *Sched. II.*, par. 9, of the Workmen's Compensation Act, 1906, to have a memorandum of agreement between his employers and himself registered, by which the employers agreed to pay him the amount of half his weekly wages "every week from the date of the accident." The county court judge ordered the agreement to be registered.

HELD—that there was no evidence from which an agreement such as the workman applied to have registered could be inferred, the only agreement being to pay him so long as he produced the above-mentioned certificate from the medical man, and therefore the registration must be vacated.

PHILLIPS *v.* VICKERS, SONS AND MAXIM, [1912]
[1 K. B. 16; [1911] W. N. 193; 105 L. T. 564
—C. A.]

101. Refusal by Judge to Record Lump Sum Settlement—Subsequent Application for Compensation—Award in Favour of Employers—Jurisdiction—*Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), *Sched. II.* (9) (d).—A county court judge refused to record a memorandum of agreement for a lump sum settlement, on the ground of inadequacy. The workman then applied for compensation, and the judge, finding that his incapacity was no longer due to the accident, and that the amount in fact paid under the abortive settlement was enough to cover all compensation due for the short period during which the incapacity had been due to the accident, awarded in favour of the employers.

HELD—that, on the refusal to record, the parties were relegated to their previous rights unprejudiced, and that the judge was entitled to decide the application for compensation freely on the evidence, not being bound, by his previous decision, to award for the workman.

BEECH *v.* BRADFORD CORPORATION, 4 B. W.
[C. C. 236—C. A.]

102. Memorandum not Representing Agreement Actually Made—Power of Judge to Record—*Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), *Sched. II.* (9).—Under *Sched. II.*, par. 9, of the Workmen's Compensation Act, 1906, a county court judge has no power to record a memorandum of an agreement different from that in fact made between the parties.

SHORE *v.* S.S. HYRCANIA (OWNERS), 4
[B. W. C. C. 207; LUNT *v.* SUTTON HEATH
AND LEA GREEN COLLIERIES, LD., 4
B. W. C. C. 219—C. A.]

I. Liability of Master for Injury to Servant— *Continued.*

103. Terms in Memorandum not Agreed upon between Parties—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (9).]—A workman applied to have a memorandum of agreement recorded, and it appeared that the memorandum included certain terms as to which there was no evidence of any agreement having been arrived at.

HELD—that the memorandum could not be recorded.

M'GEOWN v. WORKMAN, CLARK & Co., LD.,
[45 I. L. T. 165—C. A., Ireland.

(o) Reviewing Award.

See also Nos. 41, 45, supra.

104. Weekly Payment Reduced as from Past Date—Intermediate Payments of Full Amount—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (19).]—A workman was injured in the course of his employment, and in respect thereof a weekly payment of 14s. 7d. was agreed to be paid as compensation. An application was subsequently made to review this payment as from February, 1910, and in June, 1910, the county court judge reduced the weekly payment to 10s., as from February. The weekly sum of 14s. 7d. was paid to the workman until the order for the reduced payment was made in June. The 10s. a week not having been paid, the workman applied for liberty to issue execution.

HELD—that although the employer might have a right to recover from the workman the amount overpaid as from February, those overpayments could not be regarded as a payment in respect of the reduced amount ordered to be paid, and, therefore, that the employer was liable to pay the 10s. a week.

HOSEGOOD & SONS v. WILSON, [1911] 1 K. B. [30; 80 L. J. K. B. 519; 103 L. T. 616; 27 T. L. R. 88; 4 B. W. C. C. 30—C. A.

105. Permanent Partial Incapacity—Return to Work under Old Employers—Dismissal for Alleged Misconduct—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (b).]—By an accident a workman lost the use of his left eye. His employers, under a registered agreement, paid him 10s. 6d. a week during incapacity. He resumed work at his former rate of wages, but was subsequently dismissed for alleged misconduct. On application by the employers to review the agreement, the county court judge reduced the weekly payments to one penny, on the ground that the workman had brought about his own dismissal.

HELD—that one act of misconduct did not necessarily disentitle the workman to compensation.

W. WHITE & SONS v. HARRIS, 4 B. W. C. C. 39—C. A.

106. Earning Capacity of Workman—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (3).]—Where, upon an application by employers to reduce the weekly compensa-

tion payable to a workman under the Workmen's Compensation Act, 1906, on the footing of total incapacity, it was proved that the man was prevented by the accident from doing the full work of an ordinary labourer, but that he could do some light work if he could obtain it, and there was no evidence that he could obtain any suitable employment:—

HELD—that it was incumbent on the employers to show what particular light work the workman could do and to give some evidence that he had a chance of obtaining that particular kind of work, and that in the absence of that evidence reduction ought to be refused.

PROCTOR & SONS v. ROBINSON, [1911] 1 [K. B. 1004; 80 L. J. K. B. 641; 3 B. W. C. C. 41—C. A.

107. Change in Workman's Condition—Fluctuation of Labour Market—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16).]—An award was made in favour of a workman on the basis that he was totally incapacitated. Subsequently, the employers applied for a review, claiming a termination, or alternatively, a diminution, of the weekly payments. At the hearing of this application the evidence of the medical referee was to the effect that the workman, though not able for his former work, was able to do any form of light work. The workman gave evidence that he had made several unsuccessful applications for certain kinds of light work. Upon this evidence the county court judge held that there had been such a change of circumstances as entitled him to review the weekly payments, which he accordingly reduced from 9s. 2d. to 8s. a week.

HELD (Cozens-Hardy, M.R., dissenting)—that it was competent to the county court judge to find that the circumstances had so altered as to justify a reduction.

Clark v. Gas Light and Coke Co. ((1905) 7 W. C. C. 119) and Proctor & Sons v. Robinson (supra) explained and distinguished.

Per Buckley, L.J.—Inability to earn, for the purposes of Sched. I., par. 3, of the Workmen's Compensation Act, 1906, is inability to get employment owing to some incapacity for work (see Sched. I., par. 1 (b)) personal to the workman, to the exclusion of inability to get employment owing to the state of the labour market, and this construction applies to an application to review as well as to an original application for compensation. Consequently, proof that a workman has made repeated and unsuccessful efforts to obtain suitable employment does not of itself establish a right to compensation on the basis of total incapacity.

CARDIFF CORPORATION v. HALL, [1911] 1 K. B. [1009; 80 L. J. K. B. 641; 104 L. T. 467; 27 T. L. R. 339; 4 B. W. C. C. 159—C. A.

108. Incapacity for Work—Burden of Proof—Onus on Applicant for Review—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I.

I. Liability of Master for Injury to Servant— *Continued.*

(16).]—Where an employer applies for the termination of an award of compensation, he must establish that the workman is not at that time under any incapacity by reason of the accident, and he does not discharge the onus cast upon him by merely proving that the workman is doing light work for him at the old rate of wages. The circumstances of each case must be looked at, applying ordinary common sense to the facts.

CORY BROTHERS & CO., LD. *v.* HUGHES, [1911] 2 K. B. 738; 80 L. J. K. B. 1307; 105 L. T. 274; 27 T. L. R. 498; 4 B. W. C. C. 291—C. A.

109. *Incapacity for Work—Due to Injury, or to Unreasonable Refusal to Resume Work—Workmen's Compensation Act, 1906, Sched. I. (1) (b).*]—A workman had the tip of his little finger amputated, after an accident. The wound healed, leaving slight adhesions. After paying compensation for some time, the employers applied for a review. Shortly before the hearing the workman, acting on his doctor's advice, had a further amputation of the finger. The county court judge held that the man was fit for work, and that the persistence of the adhesions was due to his unreasonable refusal to resume work, which would have soon broken them down and reduced the payments to 1d. per week.

HELD—that there was no evidence to support the findings of the county court judge. BURGESS & CO., LD. *v.* JEWELL, 4 B. W. C. C. [145—C. A.]

110. *Inability to Obtain Work—1d. a Week Award—Review and Full Compensation Given—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (3).*]—A workman with an injury to his knee recovered sufficiently to be able to resume work, but his knee was liable to break down at any time. He was unable to obtain any work from his employers or any one else, owing to his having had an accident, and to the chance of his breaking down.

HELD—that he was entitled to full compensation.

THOMAS *v.* FAIRBAIRNE, LAWSON & CO., LD., [4 B. W. C. C. 195—C. A.]

111. *Award by Representative Committee—Application to County Court for Review—Jurisdiction—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), Scheds. I. (12), II. (1).*]—A workman in receipt of compensation having accepted his employer's offer of light work at his former wages was awarded the reduced weekly payment of 1d. by a committee representative of employers and workmen under the Workmen's Compensation Act, 1897. Afterwards, finding himself unable to do the light work, he applied to the county court for a review of the weekly payment and gave due notice to his employers that he objected to his application being settled by the committee. On the application coming before the county court judge, the latter held

that he had no jurisdiction to hear the application.

HELD—that the application was a reconsideration of the matter under fresh circumstances, and that the Act gave to either party the right to object to the submission of any fresh issue to the representative committee at any time before the committee met to consider that fresh issue, and therefore that the county court judge had jurisdiction to hear the application.

R. *v.* TEMPLER, 132 L. T. Jo. 203; *Times*, [December 18th, 1911—Div. Ct.]

112. *Recovery of Workman—Termination of Weekly Payments—Supervening Incapacity—Fresh Application by Workman—Competency—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (12).*]—Where the sheriff has already found that a workman's incapacity has ceased, and has terminated the weekly payments, an application by the workman for compensation on the ground of supervening incapacity, caused through the injury sustained by him, is incompetent.

CADENHEAD *v.* AILSA SHIPBUILDING CO., LD., [1910] S. C. 1129; 47 Sc. L. R. 784—Ct. of Sess.

113. *Recovery from Injury—Report of Medical Referee—Supervening Incapacity—Question whether Incapacity due to Accident—Burden of Proof—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I.*]—Under a remit by parties to a medical referee to report on the condition of a workman, who had been injured and who was in receipt of compensation, the referee reported that he was fit for his former work. Thereafter the employers presented an application for review of the compensation, which was opposed by the workman on the ground that, since the date of his examination by the medical referee, he had again become incapacitated as a result of the accident.

HELD—that the onus was on the workman of proving that the supervening incapacity was due to the accident.

McCallum v. Quinn ([1909] S. C. 227) distinguished.

M'GHEE *v.* SUMMERLEE IRON CO., LD., [1911] [S. C. 870; 48 Sc. L. R. 807; 4 B. W. C. C. 424—Ct. of Sess.]

114. *Finding that Workman Fit for Light Work, and that Employers had Offered such Light Work—No Finding as to Wages that could be so Earned—Diminution of Weekly Payments—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16).*]—In an arbitration under the Workmen's Compensation Act, 1906, in which the employers craved a review of the weekly payment payable by them to an injured workman, in respect of total incapacity, the arbitrator found in fact (1) that the workman was able for certain specified light work, (2) that the employers had offered him such light work, and (3) that there was no evidence to show how much the workman might earn by such light work.

HELD—that to found an award diminishing

I. Liability of Master for Injury to Servant— *Continued.*

the weekly payment, a finding that the workman was able to earn a specific weekly wage at work which he was able to do was not necessary, and that such an award might proceed on (1) the finding as to the workman's capacity, and (2) the offer of light work by the employers.

Cardiff Corporation v. Hall (supra) and Proctor & Sons v. Robinson (supra) considered.

CARLIN v. ALEXANDER STEPHEN & SONS, LD., [1911] S. C. 901; 48 Sc. L. R. 862—Ct. of Sess.

(p) Serious and Wilful Misconduct.

115. Wilful Misconduct—Death by Accident—Scope of Employment—Claim by Dependants—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1) (c).]—H. while employed as a collier by the defendants was engaged with two other colliers in drilling a hole from above into a stall below to let out the gas in order to enable the stall to be worked. The entrance to this stall from below had been blocked with cross boards to show that it was unsafe for any one to enter, and the men were by rules expressly forbidden to enter any working so blocked without special leave. H. and his mates had worked the drill some 5ft. into the ground without getting into the stall below, and he then asked a fireman and overlooker if he might go into the stall from below to ascertain whether the drill was being driven in the right direction. The fireman told H. he was not to go, as the stall was unsafe. Notwithstanding this, H. entered the stall from below; he was heard by his mates above tapping against the roof of the stall, and then all sounds ceased, and he was subsequently discovered in the stall suffocated by gas. On a claim for compensation by his dependants:—

HELD (Buckley, L.J., dissenting)—that, although H. had been guilty of wilful misconduct, his dependants were entitled to claim compensation, as the act done by him, although wrongful, was within the sphere of his employment.

HARDING v. BRYNDDU COLLIERY CO., LD. [1911] 2 K. B. 747; 80 L. J. K. B. 1052; 105 L. T. 55; 27 T. L. R. 500; 55 Sol. Jo. 599; 4 B. W. C. C. 269—C. A.

(q) Sub-contracting, etc.

[No paragraphs in this vol. of the Digest.]

(r) Workman and Employer.

116. Taxi-cab Driver—"Workman"—"Contract of Service"—Question of Fact—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), ss. 1, 13.]—The findings of fact by a county court judge sitting as an arbitrator under the Workmen's Compensation Act, 1906, cannot be set aside if there was evidence to support the findings. The question whether there was evidence is a question of law.

The respondents let out a taxi-cab to the appellant, who was injured by an accident

while he was driving the cab. Upon an application for compensation under the Act there was evidence that the relation of the respondents to the appellant was that of hailer and bailee of the taxi-cab, and the county court judge found as a fact that that was the true relation and that there was no contract of service:—

HELD—that the finding could not be set aside, and that the appellant was not entitled to compensation.

Decision of C. A. (3 B. W. C. C. 500), affirmed.

SMITH v. GENERAL MOTOR CAB CO., LD., [1911] A. C. 188; 80 L. J. K. B. 839; 105 L. T. 113; 27 T. L. R. 370; 55 Sol. Jo. 439; 4 B. W. C. C. 249—H. L.

117. Earnings—"Remuneration"—Whether over £250 a Year—Chief Steward on Steamship—Bonus—Profits on Sale of Liquor—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.]—The chief steward on board a steamship received, in addition to his salary, a bonus of £2 a month, which was described in the accounts as "conditional money," and which was paid to him when the employers were satisfied with his work. He was also supplied by his employers with bottles of whisky at 4s. each, which he retailed at 6d. a glass, making a profit on each bottle sold, which he was entitled to keep for himself.

HELD (Moulton, L.J., dissenting)—that the bonus and the profit realised on the sale of whisky must be taken into account in considering the amount of the chief steward's "remuneration" for the purposes of sect. 13 of the Workmen's Compensation Act, 1906.

SKAILES v. BLUE ANCHOR LINE, LD., [1911] 1 K. B. 360; 80 L. J. K. B. 442; 103 L. T. 741; 27 T. L. R. 119; 55 Sol. Jo. 107; 4 B. W. C. C. 16—C. A.

118. Member of Employer's Family—Dwelling in his House—Injured while Absent for Several Weeks—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.]—A man, aged 26, employed by his father, lived with him and paid him board and lodging. He was injured while absent for several weeks on his employer's business.

HELD—that he was a "member" of his employer's family, "dwelling in his house," and therefore was not a workman entitled to compensation within sect. 13 of the Workmen's Compensation Act, 1906.

M'DOUGALL v. M'DOUGALL, [1911] S. C. 426; [48 Sc. L. R. 315; 4 B. W. C. C. 373—Ct. of Sess.

119. Blind Man Employed in Charitable Institute—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.]—A blind man was injured while employed in the industrial department of an institute for the blind. This department was supported partly by charitable contributions received by the institute. The institute gave the man, in respect of his services, board, lodging, and 5s. a month,

I. Liability of Master for Injury to Servant— *Continued.*

and received on his account charitable and parochial assistance which came to a few pounds less than the amount it expended on him.

HELD—that the man was a workman within the meaning of the Workmen's Compensation Act, 1906.

MACGILLIVRAY v. NORTHERN COUNTIES INSTITUTE FOR THE BLIND, [1911] S. C. 897; 48 Sc. L. R. 811; 4 B. W. C. C. 429—Ct. of Sess.

(s) Contracting Out.

120. Certified Scheme—Jurisdiction—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 3.]—A workman agreed that the provisions of a duly certified scheme should be substituted for the provisions of the Workmen's Compensation Act, 1906. The workman having died from lead poisoning, his widow applied for compensation under the Act.

HELD—that the workman, having come into the scheme, was for all purposes outside the provisions of the Act, and, therefore, the applicant was not entitled to an award of compensation under the Act.

HORN v. LORDS COMMISSIONERS OF THE ADMIRALTY, [1911] 1 K. B. 24; 80 L. J. K. B. 278; 103 L. T. 614; 27 T. L. R. 84; 4 B. W. C. C. 1—C. A.

(t) Surgical Operations.

See No. 109, supra.

(u) Industrial Diseases.

121. Certificate of Certifying Surgeon Referred to Medical Referee—Scope of Medical Referee's Decision—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8, sub-s. 1 (f).]—Under sect. 8, sub-sect. 1 (f), of the Workmen's Compensation Act, 1906, a medical referee can only decide whether a certifying surgeon's certificate was rightly granted; and accordingly, where a medical referee has upheld the granting of a certificate of disablement, an addendum by him to the effect that, at the date of his (the medical referee's) examination, the workman is again able for his work, is incompetent, and must be treated *pro non scripto*.

GARRETT v. WADDELL & SON, [1911] S. C. 1168; 48 Sc. L. R. 937—Ct. of Sess.

122. Certificate of Certifying Surgeon Referred to Medical Referee—Form of Medical Referee's Decision—Categorical Answer—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8, sub-s. 1 (f).]—When a certificate by a certifying surgeon as to whether a workman is suffering from an industrial disease is objected to, and is referred to under sect. 8, sub-sect. 1 (f), of the Workmen's Compensation Act, 1906, to a medical referee, it is the duty of the medical referee to decide categorically whether the certificate has been rightly granted or not.

Where, therefore, a medical referee had pronounced a decision "subject to" a note, the

terms of the note being contradictory of what purported to be the effect of the decision:—

HELD—that the matter must be remitted to him to complete the reference by giving a categorical answer.

WINTERS v. ADDIE & SONS' COLLIERIES, LD., [1911] S. C. 1174; 48 Sc. L. R. 940—Ct. of Sess.

2. Under Employers' Liability Act, 1880.

[No paragraphs in this vol. of the Digest.]

3. Apart from Workmen's Compensation and Employers' Liability Acts.

See also MINES, No. 2; SHIPPING, No. 3.

123. Coal Mine—Statutory Regulations—Negligence of Manager—"Competent Person"—Liability of Owners—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 49.]—A miner lost his life while at work in a mine through inhaling carbon monoxide gas. The managers and fireman appointed by the colliery owners as "competent persons" under sect. 49 of the Coal Mines Regulation Act, 1887, though possessed of the qualifications usually required in such persons, had no experience of carbon monoxide gas, and had failed to take the statutory precautions required in the Rules contained in sect. 49 of the Act. In an action by the representatives of the miner against the owners:—

HELD—that the owners were liable as not having fulfilled a statutory duty and that they could not set up the defence of common employment.

Decision of Ct. of Sess. ([1909] S. C. 152; 46 Sc. L. R. 191) reversed.

BLACK v. FIFE COAL CO., 132 L. T. Jo. 177; [Times, December 20th, 1911.]

See S. C. MINES, No. 1.—H. L. (Sc.)

124. Common Employment—Negligence of Fellow Servant—Infant.]—The doctrine of common employment does not apply in the case of an infant of such tender years that it cannot reasonably be supposed that in accepting employment he undertook the risk of negligence on the part of his fellow servants.

BASS v. HENDON URBAN DISTRICT COUNCIL, [28 T. L. R. 8—Darling, J.]

125. Harbour Commissioners—Use of Crane Let to Discharge Cargo—Injury to Seaman Unloading Vessel—Negligence of Craneman Found by Jury—General Servant—Particular Employment—Liability of Harbour Commissioners.]—The respondents were proprietors of a harbour with quays. As part of the plant there were travelling cranes for unloading vessels at the quays. A shipowner having applied for the use of one of the cranes, which was managed by a man in the service of the respondents, and the hirer having, as found by the jury, no authority to control the craneman, except as to the time of raising and lowering the buckets:—

HELD, on the facts, in an action by a sea-

I. Liability of Master for Injury to Servant— *Continued.*

man engaged in unloading a vessel who was injured by the negligence of the craneman in lowering the bucket—that the craneman was not the servant of the hirer, and the respondents were liable in damages for the injury to the seaman.

Donovan v. Laing, Wharton and Down Construction Syndicate ([1893] 1 Q. B. 629) considered.

Decision of C. A., Ireland ([1910] 2 I. R. 470) affirmed.

M'CARTAN v. BELFAST HARBOUR COMMISSIONERS, [1911] 2 I. R. 143; 44 I. L. T. 223—H. L. (I.)

II. LIABILITY OF MASTER FOR ACTS OF SERVANT.

See also LIBEL, No. 3.

126. Taxi-cab Driver—Liability of Owner to Third Parties—Bailor and Bailee—Agency.—Although the relation between a taxi-cab owner and driver *inter se* may be that of bailor and bailee and not of master and servant within sect. 13 of the Workmen's Compensation Act, 1906, the driver may still, *quoad* third parties, be treated as the agent of the owner, authorised to ply for hire in the streets for reward to the owner; and the owner may be thereby rendered liable to third parties for those acts of the driver which are within the scope of his authority.

SMITH v. GENERAL MOTOR CAB CO., LD., [1911] A. C. 188; 80 L. J. K. B. 839; 105 L. T. 113; 27 T. L. R. 370; 55 Sol. Jo. 439; 4 B. W. C. C. 249—H. L.

See S. C. under I., 1 (r), *supra*.

127. Liability of Master for Slander of Servant—Course of Employment—Relevancy.—In an action of damages for slander raised by the wife of the tenant of a house in a city, pursuer, against the corporation of the city, defenders:—

HELD—that a tax-collector whose duties included “the collection of the police assessments payable by the pursuer’s husband and the granting of receipts therefor,” and who consequently had to consider what credits the payee was entitled to, was not acting within the scope of his employment in accusing the pursuer of altering and forging a receipt entitling to a credit, so as to render the corporation, his employers, liable in damages for slander.

Decision of the Ct. of Sess. ([1910] S. C. 693; 47 Sc. L. R. 630) reversed.

GLASGOW CORPORATION v. LORIMER (OR *RIDDELL*), [1911] A. C. 209; 80 L. J. P. C. 175; 104 L. T. 354; 55 Sol. Jo. 363; 48 Sc. L. R. 399—H. L. (Sc.).

128. Negligence of Servant—Scope of Employment—Servant having General Authority to Take Out Motor Cars Belonging to His Master.—I., who was the manager of the department for the sale of second-hand cars in the business of F. & Co., a firm of motor engineers,

while driving on a Saturday evening, at about 7 p.m., accompanied by two ladies, in a second-hand motor-car belonging to F. & Co., ran over and killed G. B. In an action taken by G. B.’s widow against F. & Co., under Lord Campbell’s Act, for negligence of I., evidence was given that I. frequently took out second-hand cars from the department of the business of which he was the manager without accounting to anyone for so doing, and that the petrol used by I. in so taking out these cars was charged to the second-hand department of the business. I. admitted that he took out the cars without accounting for so doing, and, in his evidence at the trial, stated that his being on the road gave him better opportunities for doing business for the firm; that on one or two occasions, of which that of the accident was not one, he had himself paid for the petrol he used in taking out the cars, but that upon the occasion of the accident he was driving solely for his own pleasure. The jury found that at the time of the accident I. was acting within the scope of his employment as the servant of F. & Co.

HELD—that there was evidence to justify the verdict of the jury, that I. was acting within the scope of his employment so as to render F. & Co. liable for his negligence.

BOYLE v. J. B. FERGUSON, LD., [1911] 2 I. R. [489—Div. Ct., Ireland.

III. CONTRACTS BETWEEN MASTER AND SERVANT NOT RELATING TO PERSONAL INJURIES.

See also CONTRACT, No. 12; EDUCATION, No. 8.

129. Breach of Contract by Workman—Claim for Damages by Employers—Wages Due to Workman—“Claim” by Workman—Adjustment of Damages and Wages—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 3.—Employers summoned a workman under the Employers and Workmen Act, 1875, claiming damages for the workman’s breach of contract by absenting himself without leave, and further claiming that the wages earned by and due to the workman from the employers might be ascertained, and that the respective claims for damages and wages should be adjusted and set off by the Court. At the hearing the magistrate found that there had been a breach of contract by the workman, and he awarded the employers 11s. 3d. as damages and costs; and he also found that a sum of £1 15s. 8d. was due to the workman by the employers, and was payable to the workman on the next pay day. No claim for wages had, in fact, been made by the workman before the proceedings before the magistrate were taken. The magistrate was of opinion that the indebtedness of the employers of the sum of £1 15s. 8d. constituted a “claim” by the workman within the meaning of sect. 3, subsect. 1, of the Employers and Workmen Act, 1875, and he held that he was bound to set off the damages and costs awarded to the employers against the £1 15s. 8d. payable to the workman.

III. Contracts between Master and Servant not relating to Personal Injuries—Continued.

Held—that the magistrate was entitled to deal with subsisting claims of the workman which were brought to his notice, although such claims had not been put forward by the workman.

Decision of C. A. ([1910] 2 K. B. 445; 79 L. J. K. B. 722; 102 L. T. 898; 74 J. P. 292; 26 T. L. R. 477; 54 Sol. Jo. 522) affirmed.

KEATES v. LEWIS MERTHYR CONSOLIDATED COLLIERIES, LD., [1911] A. C. 641; 80 L. J. K. B. 1318; 105 L. T. 450; 75 J. P. 505; 27 T. L. R. 550; 55 Sol. Jo. 667—H. L.

130. Domestic Servant—Termination of Service at End of First Month by Notice within First Fortnight—Custom—Judicial Notice of Custom—Right of Servant to Wages.—The plaintiff entered the defendant's service as a domestic servant on November 3rd, 1910. On November 17th she gave notice of her intention to leave at the end of the month, and she left on December 3rd. The defendant declined to pay the plaintiff her wages on the ground that she had broken her contract by failing to give proper notice, whereupon the plaintiff sued the defendant, claiming her wages. At the trial no evidence was given of any custom entitling the plaintiff to determine her service at the end of the first month by notice within the first fortnight, but the county court judge took judicial notice of the existence of such a custom, saying that he had done so upon other occasions; and accordingly gave judgment for the plaintiff.

Held—that the county court judge, having had the question of the custom before him on previous occasions, was entitled to take judicial notice thereof, and further that, apart from the custom, and assuming that the plaintiff wrongfully left the defendant's service, she was entitled to wages for the month she had been in the defendant's service.

Moult v. Halliday ([1898] 1 Q. B. 125) discussed.

GEORGE v. DAVIES, [1911] 2 K. B. 445; 80 L. J. K. B. 924; 104 L. T. 648; 27 T. L. R. 415; 55 Sol. Jo. 481—Div. Ct.

IV. DISMISSAL.

131. Secret Profit—Servant's Denial accepted by Employer—"Condonation."—Where a servant has in fact been guilty of some act of misconduct in his employment—for example, by taking a secret profit—but the master accepts the servant's denial of guilt and honestly comes to the conclusion that the servant is innocent, then, whatever the master's credulity, the servant is not entitled, in an action for illegal dismissal, to rely on condonation, since no man can condone a wrong which he does not believe has been committed upon him.

FEDERAL SUPPLY AND COLD STORAGE CO. OF [SOUTH AFRICA, LD. v. ANGEHRN AND PIEL], 80 L. J. P. C. 1; 103 L. T. 150; 26 T. L. R. 626; 48 Sc. L. R. 706—P. C.

132. Dismissal with Wages in Lieu of Notice—Breach of Contract—Covenant not to enter Similar Employment.—It is not competent for a servant to contend that he has been wrongfully dismissed when, instead of being given a week's notice to quit, in accordance with the terms of his contract, he is paid a week's salary and dismissed. Such a transaction does not amount to a wrongful dismissal, coupled with a tender of damages, so as to release the servant from a covenant not to enter similar employment in the neighbourhood.

W. DENNIS & SONS, LD. v. TUNNARD BROTHERS, [56 Sol. Jo. 162—Eady, J.

V. WAGES.

See Nos. 129, 130, *supra*.

VI. SEDUCTION OF SERVANT.

[No paragraphs in this vol. of the Digest.]

VII. APPRENTICES.

133. Apprenticeship Deed—Restrictive Covenant—Breach of Covenant after Expiration of Apprenticeship—Injunction.—A restrictive covenant contained in an apprenticeship deed prohibiting the apprentice from carrying on within a defined radius the same business as his master after the expiration of the apprenticeship is, if fair and reasonable, binding on the apprentice notwithstanding that he entered into it when he was an infant. A breach of such a covenant committed after the expiration of the apprenticeship can therefore be restrained by injunction.

GADD v. THOMPSON, [1911] 1 K. B. 304; 80 L. J. K. B. 272; 103 L. T. 836; 27 T. L. R. 113; 55 Sol. Jo. 156—Div. Ct.

MAYOR.

See MUNICIPAL CORPORATION; ELECTIONS.

MAYOR'S COURT.

See COURTS.

MEDICINE AND PHARMACY.

		COL.
I. MEDICAL PRACTITIONERS . . .		405
II. DENTISTS.		
(a) Unregistered Persons . . .		405
[No paragraphs in this vol. of the Digest.]		
(b) Dental Companies . . .		405
[No paragraphs in this vol. of the Digest.]		
(c) In General . . .		405
[No paragraphs in this vol. of the Digest.]		

Medicine and Pharmacy—Continued.

III. VETERINARY SURGEON . . . 405
[No paragraphs in this vol. of the Digest.]

IV. SALE OF POISONS . . . 405

V. CHEMISTS . . . 406
[No paragraphs in this vol. of the Digest.]

I. MEDICAL PRACTITIONERS.

1. *Sale of Practice—Custom to Attend Family of Deceased Medical Man without Fee.*—Although there is not a binding custom, there is a very general practice among medical men not to charge the widow and children of a deceased medical man for attendance. If, therefore, a doctor intends to charge in such a case he must say so, and thus give the patient the opportunity of declining his services and of going to another doctor who will not charge.

CORBIN v. STEWART, 28 T. L. R. 99—
[Scrutton, J.]

II. DENTISTS.**(a) Unregistered Persons.**

[No paragraphs in this vol. of the Digest.]

(b) Dental Companies.

[No paragraphs in this vol. of the Digest.]

(c) In General.

[No paragraphs in this vol. of the Digest.]

III. VETERINARY SURGEONS.

[No paragraphs in this vol. of the Digest.]

IV. SALE OF POISONS.

2. *Sale by Unlicensed Person—Insecticide—Unlicensed Assistant of Licensed Shopkeeper—Penalty—Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 15—Poisons and Pharmacy Act, 1908 (8 Edw. 7, c. 55), s. 2.*—An unlicensed assistant of a person duly licensed under sect. 2 of the Poisons and Pharmacy Act, 1908, sold an insecticide containing a poisonous vegetable alkaloid within the schedule to that Act.

HELD—that he was liable to the penalty prescribed by sect. 15 of the Pharmacy Act, 1868.

PHARMACEUTICAL SOCIETY v. NASH, [1911]
[1 K. B. 520; 80 L. J. K. B. 416; 103 L. T. 802; 75 J. P. 151; 27 T. L. R. 147; 55 Sol. Jo. 156—Div. Ct.]

3. *Poisonous Substance to be used in Agriculture or Horticulture—Bottle not Labelled with Name and Address of Seller—Failure to Conform to Regulations—Penalty—Pharmacy Act, 1868 (31 & 32 Vict. c. 121), ss. 15, 17—Poisons and Pharmacy Act, 1908 (8 Edw. 7, c. 55), s. 2.*—Sect. 15 of the Pharmacy Act, 1868, provides that any person who shall sell poisons, not being a registered pharmaceutical chemist, or chemist and druggist, shall be liable to pay a penalty which may be sued for. By sect. 2 of the Poisons and Pharmacy Act, 1908, sect. 15 of the Act of 1868 shall not apply to a seller of poisonous substances to be used exclusively in agriculture and horticulture who is duly licensed under sect. 2 of the

Act of 1908 and who conforms to the regulations made under that Act.

The defendant, who was not a registered pharmaceutical chemist, or chemist and druggist, was duly licensed by a local authority under sect. 2 of the Poisons and Pharmacy Act, 1908, to sell poisonous substances to be used exclusively in agriculture or horticulture. The defendant failed to conform to the regulations made under the Act of 1908, in that he sold a poisonous substance in a bottle which was not labelled with his name and address. The plaintiffs sued the defendant for the recovery of a penalty under sect. 15 :—

HELD—that the defendant was liable to pay a penalty under sect. 15, and none the less so because the facts showed that he had also committed an offence under sect. 17 of the Act of 1868.

PHARMACEUTICAL SOCIETY v. JACKS, [1911] 2
[K. B. 115; 80 L. J. K. B. 767; 104 L. T. 640; 75 J. P. 351; 27 T. L. R. 373—
Div. Ct.]

V. CHEMISTS.

[No paragraphs in this vol. of the Digest.]

MEMORANDUM OF ASSOCIATION.

See COMPANIES.

MERCANTILE AGENT.

See AGENCY.

MERCHANDISE MARKS.

See TRADE MARKS AND DESIGNS.

MERCHANT SHIPPING.

See SHIPPING AND NAVIGATION.

MERGER.

See MORTGAGES; REAL PROPERTY AND CHATTELS REAL.

MESNE PROFITS.

See LANDLORD AND TENANT; MORTGAGES; REAL PROPERTY AND CHATTELS REAL.

METROPOLIS.

	COL.
I. BUILDINGS.	
(a) In General	408
[No paragraphs in this vol. of the Digest.]	
(b) Building Line.	
(1) <i>In General</i>	408
(2) <i>Projecting Structures</i>	408
(c) "Building or Structure"	410
(d) Nature of Buildings.	
(1) <i>In General</i>	410
(2) <i>Dwellings for Working Classes</i>	411
[No paragraphs in this vol. of the Digest.]	
(e) Height of Buildings	411
[No paragraphs in this vol. of the Digest.]	
(f) Dangerous, Defective, Temporary, and Wooden Structures	411
[No paragraphs in this vol. of the Digest.]	
(g) Party Walls	411
II. BYE-LAWS.	
(a) Betting in Streets	412
[No paragraphs in this vol. of the Digest.]	
(b) Lavatories and Water-closets	412
[No paragraphs in this vol. of the Digest.]	
(c) Lights on Vehicles	412
[No paragraphs in this vol. of the Digest.]	
(d) Lodging-houses	412
[No paragraphs in this vol. of the Digest.]	
III. DRAINAGE	
(a) Drain or Sewer	412
(b) In General	413
IV. HACKNEY CARRIAGES	413
V. NUISANCES, ETC.	
(a) Offensive Trades	414
[No paragraphs in this vol. of the Digest.]	
(b) Removal of Refuse	414
[No paragraphs in this vol. of the Digest.]	
(c) Smoke	414
[No paragraphs in this vol. of the Digest.]	
(d) In General	414
[No paragraphs in this vol. of the Digest.]	
VI. OFFICERS	414
[No paragraphs in this vol. of the Digest.]	
VII. RATES	414
VIII. SANITARY CONVENIENCES, WATER-CLOSETS, ETC.	414
[No paragraphs in this vol. of the Digest.]	
IX. STREETS	
(a) Breaking Up	414
(b) Laying Out	414
[No paragraphs in this vol. of the Digest.]	
(c) Obstruction	414
[No paragraphs in this vol. of the Digest.]	
(d) Paving and Making Up	414
(e) Widening	415
(f) In General	415

	COL.
X. WATER SUPPLY	416
XI. MISCELLANEOUS	418

See also CROWN PRACTICE, No. 4; MARKETS, No. 1; RAILWAYS, No. 13; SALE OF GOODS, No. 4.

I. BUILDINGS.**(a) In General.**

[No paragraphs in this vol. of the Digest.]

(b) Building Line.**(1) In General.**

1. Notice to Set Back Building—*Forecourt or other Space*—*London Building Act, 1898* (61 & 62 Vict. c. cxxxvii.), s. 3.]—Sect. 3 of the *London Building Act, 1898*, does not empower the London County Council to give notice requiring the owner or occupier of land upon which he has erected a new building to set back an old boundary wall, forming the boundary of a space left between the new building and a street, so that the wall shall not be less than the prescribed distance from the centre of the roadway of the street.

REA v. LONDON COUNTY COUNCIL, [1911] 1 K. B. [740; 80 L. J. K. B. 704; 104 L. T. 501; 75 J. P. 261; 9 L. G. R. 299—Div. Ct.]

(2) Projecting Structures.

2. General Line of Buildings in Street—*Shops Erected on Forecourts*—*Alteration of Building Line*—*Consent of Metropolitan Board of Works*—*Metropolis Management Amendment Act, 1862* (25 & 26 Vict. c. 102), s. 75—*London Building Act, 1894* (57 & 58 Vict. c. ccxiii.), ss. 22, 27, 216.]—The superintending architect certified that the frontage line of old houses in the respective forecourts of which, in some cases, one-storey shops had been erected was still the general line of buildings in that part of the street.

The tribunal of appeal took the view that the general line of buildings was the frontage line of the shops.

The Court of Appeal upheld the certificate of the superintending architect, and the building owners appealed.

HELD—that the superintending architect had rightly disregarded the one-storey buildings which had subsequently been erected on the forecourts, as there was evidence that some only had been erected with the consent of the Metropolitan Board of Works, while as to one of the others there was evidence that the consent of the board had been refused; and as to the rest, there was no evidence that consent had been applied for.

Decision of C. A. ([1909] 2 K. B. 317; 78 L. J. K. B. 830; 101 L. T. 323; 73 J. P. 339; 53 Sol. Jo. 558; 7 L. G. R. 720) affirmed.

FLEMING v. LONDON COUNTY COUNCIL; [METROPOLITAN RY. CO. v. LONDON COUNTY COUNCIL], [1911] A. C. 1; 80 L. J. K. B. 35; 103 L. T. 466; 75 J. P. 9; 55 Sol. Jo. 28; 8 L. G. R. 1055—H. L.

3. Highway—*Prescribed Distance*—*London Building Act, 1894* (57 & 58 Vict. c. ccxiii.)

I. Buildings—Continued.

s. 13 (1)—*London Building Act, 1894 (Amendment) Act, 1898* (61 & 62 Vict. c. cxxxvii.), s. 3.]—The respondent was the under-lessee and occupier of a house in Campden House Road, Kensington, and between her house and the next house there was a way leading into a mews, which was a *cul-de-sac*. She built an extension to her house, the greater part of the extension being within twenty feet of the centre of the roadway of the way, twenty feet being the prescribed distance under the London Building Act, 1894, assuming that the way was a highway. The London County Council gave notice to the respondent, under sect. 3 of the London Building Act, 1894 (Amendment) Act, 1898, to set back the extension within the prescribed distance. The respondent declined on the ground that the way was not a highway. The land on which the respondent's house was built, together with the mews and the way, all of which formed part of the Pitt estate, was the subject of a building agreement made in 1844, and in pursuance of the building agreement the respondent's house was demised in 1849 by the freeholders for a term of ninety-nine years. By 1850 other houses had been erected on the land comprised in the building agreement and had been leased in pursuance thereof. There had never been any gate or barrier between the way and Campden House Road. The mews had been lighted by the public authority since 1876. In 1891 the way was paved by the Kensington Vestry under sect. 105 of the Metropolis Management Act, 1855. Since 1854 the Pitt estate had been administered in Chancery. The mews and way were not included in the leases of any of the premises abutting on the mews, but by each lease rights of way were granted, the freeholders not parting with the property therein or the possession thereof. On a summons against the respondent for failing to comply with the above notice, the magistrate found that the mews and way were in the possession and control of the lessees of the freeholders, and that there was no evidence of an intention on the part of the freeholders to dedicate the way as a highway, and he therefore dismissed the summons.

HELD—that if the way was in the possession and control of the lessees it could not be dedicated as a highway, and that even if it was in the possession and control of the freeholders, there was no evidence of dedication on their part, and therefore the magistrate's decision was right.

LONDON COUNTY COUNCIL *v.* HUGHES, 104 L. T. [685; 75 J. P. 239; 9 L. G. R. 291—Div. Ct.]

4. "Structure" — "Projection" — *London Building Act, 1894* (57 & 58 Vict. c. ccxxiii.), ss. 22 (1), 73 (8).]—In deciding the question of fact whether an iron framework attached to a building is a "structure" within sect. 22, sub-sect. 1, of the London Building Act, 1894, and also a "projection"

within sect. 73, sub-sect. 8, of the Act, the weight of the framework, the character of the rods by which it is fastened, the method of fixing the supports and of counteracting the pressure brought to bear on that part of the building to which the framework is attached are facts rightly taken into consideration on informations charging contraventions of the above sections.

A. & F. PEARCE, LD. *v.* LONDON COUNTY [COUNCIL, 105 L. T. 525; 75 J. P. 461; 9 L. G. R. 834—Div. Ct.]

(c) "Building or Structure."

See No. 4, *supra*.

(d) Nature of Buildings.

(1) In General.

5. *Access to Roof—Public-house—Projecting Shop—Main Front—Dwelling-house Occupied as such by not more than Two Families—London Building Acts (Amendment) Act, 1905* (5 Edw. 7, c. ccix.), ss. 10, 12.]—The respondents were the owners of a house No. 120, E. Road, used as a public-house, which stood at the corner of E. Road and C. Street, being on the north side of E. Road and on the west side of C. Street. The main building had four storeys over the basement, but the ground floor projected as a ground floor building for a distance of 49 ft. beyond the south front or wall of the main building right out to the pavement of E. Road. The total length of frontage on C. Street was 86 ft., of which the frontage of the house as distinct from the projection was 37 ft., and the length of frontage on E. Road was 21 ft. The house was inhabited by thirteen persons—viz., the tenant, his wife, his three children, their servant, and the members of the public-house staff. All these persons slept in the house. There was one entrance to the house in the E. Road, and another at the corner between E. Road and C. Street leading to the bar on the ground floor, and by a passage and staircase to the first, second, and third floors; and this was the shortest way to the open street from the bedrooms and main building, and was the natural method of access to and from that part of the house.

HELD—that the magistrate was justified in finding on the evidence that the main front of the building was in C. Street, and so the building was not within sect. 10, sub-sect. 1, of the London Building Acts (Amendment) Act, 1905.

HELD, FURTHER—that the magistrate was justified in finding that the house was a "dwelling-house occupied as such by not more than two families," and so was within the exception contained in sect. 12, sub-sect. 1 (a), of the same Act.

LONDON COUNTY COUNCIL *v.* CANNON BREWERY [Co., [1911] 1 K. B. 235; 80 L. J. K. B. 253; 103 L. T. 574; 74 J. P. 461; 8 L. G. R. 1094—Div. Ct.]

6. *Jurisdiction of Tribunal of Appeal—New Building—Protection against Fire—Conditional Approval of Plans—No Appeal from—Building Erected in Disregard of Condition—Appeal*

I. Buildings—Continued.

from—Refusal of Certificate by Council—London Building Acts (Amendment) Act, 1905 (5 Edw. 7, c. ccix.), ss. 7, 22.—Where a building owner does not appeal against a conditional approval of plans for a new building deposited in accordance with sect. 7 of the London Building Acts (Amendment) Act, 1905, within two months of the conditional approval, but proceeds to erect the new building without complying with the conditions of the approval, and on failing to obtain the certificate of the London County Council under sect. 7 (2) of that Act that the building has been provided with means of escape from fire, in accordance with the plans conditionally approved, appeals against that refusal, the Tribunal of Appeal have no jurisdiction to decide the question of whether the building has, in fact, been provided with all such means of escape from fire as could be reasonably required, or to admit in evidence and approve fresh plans of the building that has been erected. They have only jurisdiction to determine the question whether the building has been in fact erected in accordance with the plans conditionally approved by the London County Council.

LONDON COUNTY COUNCIL *v.* CLARK, [1911]
[W. N. 241 ; 56 Sol. Jo. 125—Div. Ct.]

(2) *Dwellings for Working Classes.*
[No paragraphs in this vol. of the Digest.]

(e) Height of Buildings.

[No paragraphs in this vol. of the Digest.]

(f) Dangerous, Defective, Temporary, and Wooden Structures.

[No paragraphs in this vol. of the Digest.]

(g) Party Walls.

7. *Penetration of Damp—"Defective" Wall—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), s. 88 (1).*—A party wall may be "defective" within sect. 88, sub-sect. 1, of the London Building Act, 1894, which allows damp to penetrate through it.

MINTURN *v.* BARRY, MINTURN *v.* LONDON
[COUNTY COUNCIL, [1911] 2 K. B. 265; 80 L. J. K. B. 802; 104 L. T. 635; 75 J. P. 330; 27 T. L. R. 352; 55 Sol. Jo. 385; 9 L. G. R. 611—Div. Ct.]

8. *External Wall—Wall a Party Wall for Portion of its Height—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), ss. 5, 58.*—By sect. 5, sub-sect. 16, of the London Building Act, 1894, the expression "party wall" includes a wall forming part of a building and used or constructed to be used for separation of adjoining buildings as therein described. By sect. 58, where a wall is built as a party wall in any part or becomes a party wall in any part the wall shall be deemed a party wall for such part of its length as is so used.

HELD—that a wall may be a party wall for

such part of its height as is so used, and cease to be a party wall for the rest of its height.

LONDON, GLOUCESTERSHIRE AND NORTH
[HANTS DAIRY CO. *v.* MORLEY & LANCELEY,
[1911] 2 K. B. 256; 80 L. J. K. B. 908; 104 L. T. 773; 75 J. P. 437; 9 L. G. R. 738—Div. Ct.]

ON APPEAL.—Case settled without any judgment being given on the questions of law raised by the appeal, [1911] 2 K. B. 1143; 80 L. J. K. B. 1361; 105 L. T. 658; 75 J. P. 548—C. A.]

II. BYE-LAWS.

(a) Betting in Streets.

[No paragraphs in this vol. of the Digest.]

(b) Lavatories and Water-closets.

[No paragraphs in this vol. of the Digest.]

(c) Lights on Vehicles.

[No paragraphs in this vol. of the Digest.]

(d) Lodging-houses.

[No paragraphs in this vol. of the Digest.]

III. DRAINAGE.

(a) Drain or Sewer.

9. *Combined Drain for Group of Houses—Evidence of Sanction for—Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), ss. 73, 74, 78, 250.*—On a complaint that a pipe in a metropolitan borough was a nuisance and injurious to health, the following documents were produced from the custody of the metropolitan borough council:—(1) The following application in respect of certain houses, including that in question addressed to the vestry, who were the predecessors of the borough council, and dated January 28th, 1858: "Gentlemen, being desirous to have a 9-inch drain made from Alfred Place to communicate with the public sewer in the rear of Richardson Street to enable me to drain the said houses Nos. 30 to 35, Nelson Street" (in connection with one of which was the pipe complained of), "also Nos. 11 to 17, Alfred Place, I hereby request you will cause the said drain to be made from the sewer to the front line of the said premises upon the payment of the estimated cost thereof"; (2) an estimate by the surveyor of the cost of the work applied for; and (3) the cash book of the vestry duly audited showing an entry under the date February 8, 1858, of a payment by the applicant of this estimated cost of the work. No plan was in evidence as having been deposited with the application, nor was there produced any minute of the vestry sanctioning the application.

HELD—that there was evidence upon which the magistrate could find that the pipe or line of pipes was a drain and not a sewer, and that the houses referred to in the application were drained by a combined operation of drainage under the order of the vestry.

III. Drainage—Continued.

High v. Billings ((1903) 67 J. P. 388); *Geen v. Newington Vestry* ([1898] 2 Q. B. 1); and *Bateman v. Poplar District Board of Works* ((1886) 33 Ch. D. 360) followed.

HOUSE PROPERTY AND INVESTMENT CO. v. [GRICE, 75 J. P. 395; 9 L. G. R. 758—Div. Ct.]

(b) In General.

10. *Sewers—Storm Water Outlets—Discharge into Tidal Navigable Creek—Infringement of Private Rights—Nuisance—Injunction—Terms of Settlement—Measure of Damages—Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 135—*Metropolis Management Amendment Act, 1858* (21 & 22 Vict. c. 104) ss. 1, 2, 24.]—The respondents complained that certain sewage works erected and maintained by the appellants near the head of a navigable tidal creek at Battersea—of which creek the respondents were the riparian owners—caused a nuisance, and they claimed relief by injunction and damages. The appellants had since the commencement of these proceedings erected new additional works, which had enabled them to dispose of the storm water in a way which did not injure the respondents. Their Lordships, on the undertaking by the appellants to maintain the sewer and works as now existing, dismissed the appeal with costs, and discharged the injunction, the appellants agreeing to pay certain of the damages, the heads of claim being settled by consent, to be assessed by Lord Gorell or his nominee.

Decision of C. A. ([1908] 2 Ch. 526; 78 L. J. Ch. 1; 99 L. T. 571; 72 J. P. 429; 24 T. L. R. 822; 7 L. G. R. 84) affirmed on above terms.

LONDON COUNTY COUNCIL v. PRICE'S CANDLE [Co., LD., 75 J. P. 329; 9 L. G. R. 660—H. L.]

IV. HACKNEY CARRIAGES.

11. *Cab Licence—Discretion of Commissioner of Police—Metropolitan Public Carriage Act, 1869* (32 & 33 Vict. c. 115), ss. 6, 11—*Order as to Hackney and Stage Carriages of 1907*.]—Under the Metropolitan Public Carriage Act, 1869, and the order made by the Secretary of State on December 30th, 1907, under sects. 6 and 11 of that Act, the Commissioner of Police of the Metropolis has no discretion to refuse licences for cabs or stage carriages to ply for hire within the Metropolis in cases that do not come within sub-paragraphs (a) and (b) of clause 2 of the order.

R. v. Metropolitan Police Commissioner, Ex parte Pearce (*infra*) overruled.

R. v. METROPOLITAN POLICE COMMISSIONER, EX PARTE HOLLOWAY, [1911] 2 K. B. 1131; 105 L. T. 532; 75 J. P. 490; 27 T. L. R. 573; 55 Sol. Jo. 773—C. A.]

12. *Cab Licence—Discretion of Commissioner of Metropolitan Police as to Issue of Licence—Metropolitan Public Carriage Act, 1869* (32 &

33 Vict. c. 115), ss. 6, 11—*London Cab and Stage Carriage Act, 1907* (7 Edw. 7, c. 55).]—The Commissioner of Metropolitan Police has a discretion as to the issue of cab licences, and the Court will not, therefore, grant a mandamus compelling him to issue such licence.

R. v. METROPOLITAN POLICE COMMISSIONER, [EX PARTE PEARCE, 80 L. J. K. B. 223; 104 L. T. 135; 75 J. P. 85—Div. Ct.]

[Overruled by *R. v. Metropolitan Police Commissioner, Ex parte Holloway* (*supra*).]

13. *Application for Licence—Motor-cab—Discretion of Commissioner of Police to refuse—Metropolitan Public Carriage Act, 1869* (32 & 33 Vict. c. 115), ss. 6, 7.]—The Commissioner of Police is not entitled to lay down and act upon a general rule to refuse a licence for a cab where the applicant for the licence holds his cab under a hire-purchase agreement.

R. v. METROPOLITAN POLICE COMMISSIONER, [EX PARTE HUMPHREYS; R. v. METROPOLITAN POLICE COMMISSIONER, EX PARTE RANDALL, 75 J. P. 486; 27 T. L. R. 505; 55 Sol. Jo. 726—Div. Ct.]

[In this case each member of the Court regarded and felt bound by the decision of the Div. Ct. in *R. v. Metropolitan Police Commissioner, Ex parte Pearce* (*supra*), which had not then been overruled.]

V. NUISANCES, etc.

(a) Offensive Trades.

[No paragraphs in this vol. of the Digest.]

(b) Removal of Refuse.

[No paragraphs in this vol. of the Digest.]

(c) Smoke.

[No paragraphs in this vol. of the Digest.]

(d) In General.

[No paragraphs in this vol. of the Digest.]

VI. OFFICERS.

[No paragraphs in this vol. of the Digest.]

VII. RATES.

See RATES, IV.

VIII. SANITARY CONVENIENCES, WATER-CLOSETS, etc.

[No paragraphs in this vol. of the Digest.]

IX. STREETS.

(a) Breaking up.

See No. 20, *infra*.

(b) Laying Out.

[No paragraphs in this vol. of the Digest.]

(c) Obstruction.

[No paragraphs in this vol. of the Digest.]

(d) Paving and Making up.

14. *New Street—Altering Footway and Roadway—Expenses—Charging Frontagers—Metropolis Management Act, 1855* (18 & 19 Vict. c. 120),

IX. Streets—Continued.

s. 105—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77.—A certain "new street" consisted of a roadway, and had a footpath on one side varying in width from 9 ft. 7 in. to 20 ft., and a footpath on the other side varying from 19 ft. to 21 ft. The local authority, purporting to act under sect. 105 of the Metropolis Management Act, 1855, resolved to pave such new street, and apportioned between the frontagers the estimated expenses of such paving. The works comprised the throwing of part of the footpaths into the roadway, and part of the roadway into the footpaths, so as to make the footpaths on each side of the roadway of a uniform width of 15 ft.

HELD—that the local authority were not entitled under sect. 105 of the Act, to charge the frontager with the expenses of thus rearranging the footpaths and the roadway.

Robertson v. Bristol Corporation ([1900] 2 Q. B. 198) considered and applied.

WANDSWORTH BOROUGH COUNCIL v. GOLDS, [1911] 1 K. B. 60; 80 L. J. K. B. 126; 103 L. T. 568; 74 J. P. 464; 8 L. G. R. 1118—Div. Ct.

(e) Widening.

15. Taking Part Only—Factory—Michael Angelo Taylor's Act, 1817 (57 Geo. 3, c. xxix.), s. 80.—A local authority intending to widen a street has no power under Michael Angelo Taylor's Act to take part only of a factory where the use of the factory would be thereby substantially injured and could not be enjoyed in the same way as before.

Gibbon v. Paddington Vestry ([1900] 2 Ch. 794) applied.

GREEN v. HACKNEY CORPORATION, [1910] 2 Ch. 105; 80 L. J. Ch. 16; 102 L. T. 722; 74 J. P. 278; 9 L. G. R. 427—Neville, J.

(f) In General.

See also **HIGHWAYS**, No. 6.

16. Repair of Footbridge—Creation of Boroughs—Extinction of Vestries—Contribution—Transference of Areas, Powers, Duties, Property and Liabilities—Scheme—London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 1, 4.]—Under the Metropolitan Street Improvements Act, 1883, the Wedlake Street footbridge which was in the parish of St. Luke, Chelsea (detached), was transferred and became vested in the vestry of the parish of Chelsea, and by virtue of the determination of the Metropolitan Board of Works pursuant to that Act, the expenses of the footbridge were to be borne, three-sixths by the parish of Chelsea, two-sixths by the parish of Kensington, and one-sixth by the parish of Paddington.

By sect. 1 of the London Government Act, 1899, the county of London was to be divided into boroughs, and power was given by Order in Council to form each of the areas mentioned in the First Schedule—which included the parishes of Chelsea, Kensington, and Padding-

ton—into a separate borough, "Subject nevertheless to such alterations of area as might be required to give effect to the provisions of the Act," and subject to adjustment of boundaries. By sect. 4 all vestries were to cease to exist "on the appointed day," and, subject to the provisions of this Act and of any scheme made thereunder, their powers and duties were as from that day to be transferred to the council of the borough comprising the area within which those powers were exercised, "and their property and liabilities shall be transferred to that council."

By an Order in Council part of the detached parish of Chelsea which included the Wedlake Street footbridge was to form part of the borough of Paddington; and ever since the appointed day has been maintained by that borough.

HELD—that the property in the footbridge and the liabilities relating to it were vested in the borough of Paddington including the right to contribution in respect thereof as from the appointed day; and that the Royal Borough of Kensington was liable to contribute to the borough of Paddington towards the expenses incurred in maintaining, repairing, lighting, altering, improving, widening or rebuilding the footbridge, and that the proportion of such contribution was two-sixths.

PADDINGTON BOROUGH COUNCIL v. KENSINGTON ROYAL BOROUGH COUNCIL, 105 L. T. 35; 75 J. P. 514; 9 L. G. R. 868—Div. Ct.

X. WATER SUPPLY.

See also **NEGLIGENCE**, Nos. 5, 6; **WATERWORKS**, No. 3.

17. "Domestic Purposes"—Trade Purposes—Factory—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), ss. 9, 25.]—The defendants, who were manufacturers, required for their factory a supply of water for their employés to use for drinking and personal washing. The water was also used to cleanse the urinals and closets used by the employés. No one resided upon the premises.

HELD—that the water was supplied for domestic purposes, and not for trade purposes, within the meaning of the Metropolitan Water Board (Charges) Act, 1907.

Decision of C. A. ([1911] 2 K. B. 38; 80 L. J. K. B. 929; 101 L. T. 478; 75 J. P. 217; 27 T. L. R. 286; 55 Sol. Jo. 311; 9 L. G. R. 483) affirmed.

COLLEY'S PATENTS, LD. v. METROPOLITAN WATER BOARD, [1911] W. N. 211; 28 T. L. R. 48; 56 Sol. Jo. 51; 9 L. G. R. 1159—H. L.

18. Agreement to pay Special Rate in respect of Tenements under £20—Mortgage of Tenements—Meaning of "Owner"—Receiver appointed by Mortgagee—Liability for Arrears—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 3, 72; East London Waterworks Act, 1853 (16 & 17 Vict. c. clxvi.), s. 81; Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21), ss. 3, 4.]—The owner of a block of flats, which were

X. Water Supply—Continued.

respectively of an annual value of less than £20, agreed with a water company for the supply of water to the flats by meter. The owner then mortgaged the premises, and upon his getting into difficulties the defendant was appointed to act as receiver of rents on behalf of the mortgagee. The rents were actually collected from the occupiers by S., who paid them to the owner before the receiver was appointed, and then to the latter. When the defendant was appointed there were certain arrears of water rate due to the plaintiffs, who were the successors of the water company.

The company's special Act, which incorporated the Waterworks Clauses Act, 1847, provided that the owners of all houses, not exceeding the annual value of £20, should be liable for the water rates; and that the person receiving the rents should, for that purpose, be deemed to be the owner.

The defendant having refused to pay the rates which had accrued due prior to his appointment:—

HELD—that he was not liable to pay them, as S., and not the defendant, was the receiver of rents contemplated by the special Act and the Waterworks Clauses Act, 1847.

Decision of Channell, J. ([1910] 2 K. B. 134; 79 L. J. K. B. 722; 103 L. T. 72; 74 J. P. 233; 8 L. G. R. 464) affirmed, but on different grounds. **METROPOLITAN WATER BOARD v. BROOKS**, [1911] 1 K. B. 289; 80 L. J. K. B. 495; 103 L. T. 739; 75 J. P. 41; 9 L. G. R. 442—C. A.

19. Water Rates—Valuation List Altered by Supplemental Valuation List—Rateable Value Reduced—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), s. 13.]—The defendant was the occupier of licensed premises which in 1908 appeared in a supplemental valuation list at the rateable value of £400. On October 3rd, 1910, two days after the beginning of the water quarter, the assessment committee considered a provisional list in which these premises were included, and reduced their rateable value to £234. The defendant contended that the water rate for the quarter October 1st to December 31st ought to be calculated on this lower value.

HELD—that upon the true construction of sect. 13 of the Metropolitan Water Board (Charges) Act, 1907, the list there referred to was the original list in existence on the first day of the water quarter, unaltered by any provisional list unless the latter had been completed, and there must be judgment for the plaintiffs.

METROPOLITAN WATER BOARD v. PHILLIPS, [75 J. P. N. C. 616—PARKER, J.

20. Communication Pipe—Stop-Cock Bar—Liability of Householder to Repair Power to Break up Street for that Purpose—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), ss. 8, 19.]—By sect. 8 of the Metropolitan Water Board (Charges) Act, 1907, it is provided that the Board shall at the request of the owner or occupier of any house in a street in which any service main of the Board is laid furnish to

such owner or occupier "by means of a communication pipe . . . and other necessary and proper apparatus to be provided and laid down and maintained by him and at his cost" a sufficient supply of water for domestic purposes at a rate not exceeding 5 per cent. of the rateable value of the house:—

HELD—that the section in so far as it imposes an obligation upon the householder to repair the communication pipe applies to communication pipes in existence at the date of the passing of the Act.

Decision of Div. Ct. ([1911] 1 K. B. 845; 80 L. J. K. B. 521; 104 L. T. 385; 75 J. P. 174; 27 T. L. R. 258; 55 Sol. Jo. 330; 9 L. G. R. 307) reversed.

BATT v. METROPOLITAN WATER BOARD, [1911] 2 K. B. 965; 80 L. J. K. B. 1354; 105 L. T. 496; 75 J. P. 545; 27 T. L. R. 579; 55 Sol. Jo. 714; 9 L. G. R. 1123—C. A.

21. Communication Pipe—Liability for Injury to Third Person through Non-repair—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), ss. 7, 8, 19.]—Sect. 8 of the Metropolitan Water Board (Charges) Act, 1907, which makes it one of the duties of an occupier to maintain and repair his communication pipe, refers to old pipes and services as well as new pipes, and, whether this is so or not, the Metropolitan Water Board owe no duty to a third person to maintain and repair a communication pipe.

STACEY v. GAS LIGHT AND COKE CO. AND [METROPOLITAN WATER BOARD, 9 L. G. R. 174—Phillimore, J.

22. Metropolitan Water Board—New River Company—King's Clog—Metropolis Water Act, 1902 (2 Edw. 7, c. 41), ss. 2, 3, 4.]—The King's Clogg, now consisting of an annual sum of £400, is an obligation which has been transferred to, and is now an obligation of, the Metropolitan Water Board by virtue of the Metropolis Water Act, 1902, and the same is under sect. 4 secured upon the water fund established by that Act.

METROPOLITAN WATER BOARD v. ADAIR AND [NEW RIVER CO., 27 T. L. R. 253—H. L.

XI. MISCELLANEOUS.

23. Practice—Transfer of Powers—Special Case—Costs—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 29.]—On a case stated under sect. 29 of the London Government Act, 1899, the Court will not make any order as to costs.

PADDINGTON BOROUGH COUNCIL v. KENSINGTON ROYAL BOROUGH COUNCIL, 105 L. T. 35; 75 J. P. 514, 520; 9 L. G. R. 868—Div. Ct.

See S. C., No. 16, *supra*.

24. Court of Quarter Sessions—Authority to Fix Place at which Courts shall Sit.]—The London County Council, and not the Standing Joint Committee of Quarter Sessions and County Council, has the duty to decide at what place or places within the County of

XI. Miscellaneous—Continued.

London the Courts of Quarter Sessions shall sit.

STANDING JOINT COMMITTEE OF QUARTER SESSIONS AND COUNTY COUNCIL OF THE COUNTY OF LONDON v. LONDON COUNTY COUNCIL. (No. 1), 104 L. T. 923; 75 J. P. 455; 27 T. L. R. 473; 9 L. G. R. 1239—Div. Ct.

25. Court of Quarter Sessions—Right to Determine Character of Accommodation.—While the London County Council, and not the Standing Joint Committee of Quarter Sessions and County Council, has the duty to decide as to the site within the County of London at which the Courts of Quarter Sessions shall sit, the power and duty of determining the character of the accommodation to be provided on that site are vested in the joint committee, and when that committee has come to a decision thereon the County Council must provide the accommodation demanded.

STANDING JOINT COMMITTEE OF QUARTER SESSIONS AND COUNTY COUNCIL OF THE COUNTY OF LONDON v. LONDON COUNTY COUNCIL (No. 2), 75 J. P. 455; 27 T. L. R. 567; 55 Sol. Jo. 716; 9 L. G. R. 1239, 1251—Div. Ct.

MILITIA.

See ROYAL FORCES.

MILK.

See FOOD AND DRUGS.

MINES, MINERALS, AND QUARRIES.

I. MINING LEASE	COL. 419
[No paragraphs in this vol. of the Digest.]	
II. MINING REGULATIONS.	
(a) Coal Mines	419
(b) Fencing Abandoned Mines	420
[No paragraphs in this vol. of the Digest.]	
(c) Quarries	421
[No paragraphs in this vol. of the Digest.]	
III. RESERVATION OF MINERALS	421
IV. SUPPORT	422
V. MISCELLANEOUS	422
[No paragraphs in this vol. of the Digest.]	
I. MINING LEASE.	
[No paragraphs in this vol. of the Digest.]	
II. MINING REGULATIONS.	
(a) Coal Mines.	
1. Statutory Duty—Negligence of Manager—Failure to take Statutory Precautions—Appointment of "Competent Person"—Coal Mines	

Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 49.]

In an action at common law against his employers by the representatives of a miner, who was killed while at work in a coal mine by an outbreak of carbon monoxide gas, evidence was led that the mine was ventilated by an air current led past the seat of an old fire which, though it had been built up, was still smouldering; that such a fire might give off carbon monoxide gas; that the defenders had experience in another colliery of carbon monoxide gas being generated by such a fire and resulting in the death of several workmen; that the manager, under-manager, and firemen in the mine where the deceased was killed, though they possessed the qualifications and experience usually required of persons holding such offices, had no experience of carbon monoxide gas; that though these officials were aware during two days preceding the accident of circumstances which might indicate the presence of gas in the mine, they did not withdraw the workmen or take the precautions required to be taken under the rules contained in sect. 49 of the Coal Mines Regulation Act, 1887.

HELD—that the defenders were liable as not having fulfilled a statutory duty and that they could not set up the defence of common employment.

Decision of Ct. of Sess. ([1909] S. C. 152; 46 Sc. L. R. 191) reversed.

BLACK v. FIFE COAL CO., 132 L. T. Jo. 177; [Times, December 20th, 1911—H. L. (Sc.)]

2. Statutory Duty—Negligence of Manager—Liability of Mine Owner—Common Employment—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), ss. 20, 49 (r. 30), 50, 51, 65.]—The plaintiffs, the widow and children of a collier who was killed by an accident while being lowered in a cage in the defendant company's mine, sued the defendant company, claiming damages for his death under Lord Campbell's Act. The jury found that the accident occurred through the inadequacy of the brake, which was due to the negligence of the mine manager; that there had been no negligence on the part of the company, who had taken all reasonable care to appoint a manager qualified to undertake this responsibility; and that the machinery was fit for the purpose it was to be used for when put up by the company. Sect. 49, r. 30, of the Coal Mines Regulation Act, 1887, requires an adequate brake to be attached to every machine used for lowering or raising persons in a mine.

HELD—that sect. 49, r. 30, did not impose on mine-owners an absolute unqualified obligation, but only an obligation to provide such a brake as their manager should deem adequate, and that as the negligence which caused the accident here was not the negligence of the company but of the manager, a fellow servant of the deceased, the company were not liable.

WATKINS v. NAVAL COLLIERY CO. (1897), LD., [1911] 2 K. B. 162; 80 L. J. K. B. 746; 104 L. T. 439; 55 Sol. Jo. 347—C. A.

(b) Fencing Abandoned Mines.

[No paragraphs in this vol. of the Digest.]

II. Mining Regulations -Continued.

(c) Quarries.

[No paragraphs in this vol. of the Digest.]

III. RESERVATION OF MINERALS.

See also COMPULSORY PURCHASE, No. 2.

3. Fireclay—"Minerals"—*Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 70*—*Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 77.*—"Minerals," which under sect. 70 of the *Railways Clauses Consolidation (Scotland) Act, 1845*, are excepted from the conveyance of lands purchased by railway companies, include seams of fireclay, distinguished from ordinary clay by containing a large proportion of refractory substances, which make it valuable for the manufacture of bricks capable of resisting high temperatures.

Decision of Ct. of Sess. ([1910] S. C. 951; 47 Sc. L. R. 823) affirmed.

CALEDONIAN RY. CO. v. GLENBOIG UNION FIRE-CLAY CO., [1911] A. C. 290; 80 L. J. P. C. 128; 104 L. T. 657; 75 J. P. 377; 48 Sc. L. R. 526—II. L. (Sc.)

4. Freestone—*Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 70.*—It is a question of fact, to be decided on the circumstances of the particular case, whether "freestone" is a mineral within the exception contained in sect. 70 of the *Railways Clauses Consolidation (Scotland) Act, 1845*.

Decision of Ct. of Sess. ([1911] S. C. 552; 48 Sc. L. R. 539) reversed.

SYMINGTON v. CALEDONIAN RY. CO., [1911] [W. N. 231; 56 Sol. Jo. 87; 49 Sc. L. R. 49—H. L. (Sc.)]

5. Notice of Intention to Work Freestone—Counter-Notice to Leave Uncorked—Contract to Pay Compensation—*Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 71.*—The lessee of the freestone in an estate through which a railway passed gave notice to the company in terms of sect. 71 of the *Railways Clauses Consolidation (Scotland) Act, 1845*, that he intended to commence working the freestone under the line. The company gave notice that they desired certain areas to be left unworked, and expressed their willingness to pay compensation. By nomination and submission arbiters and an oversman were appointed to settle the question of compensation. The lessee ceased or altered his quarrying operations.

HELD—that the notice and counter-notice did not constitute a contract entitling the lessee to compensation and debarring the railway company from claiming that they themselves were the owners of the freestone under their line.

CALEDONIAN RY. CO. v. SYMINGTON, [1911] S. C. [552; 48 Sc. L. R. 539—Ct. of Sess.]

See S.C. on appeal, *supra*.

IV. SUPPORT.

See COMPULSORY PURCHASE, No. 2; RAILWAYS, No. 1.

V. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

MISDEMEANOURS.

See CRIMINAL LAW AND PROCEDURE.

MISREPRESENTATION AND FRAUD.

I. FRAUD	COL. 422
II. MISREPRESENTATION.	
(a) Fraudulent Misrepresentation	422
(b) Innocent Misrepresentation	423
(c) Misrepresentation as to Nature of Documents	424

See also COMPANIES, No. 35; ESTOPPEL, No. 2; EXECUTION, No. 1; FRAUDULENT AND VOIDABLE CONVEYANCES; TRADE MARKS, No. 6.

I. FRAUD.

See PLEADING, No. 1.

II. MISREPRESENTATION.

(a) Fraudulent Misrepresentation.

1. Sale of Goods—Voidable Contract—Pledge by Purchaser—Transferee in Good Faith and without Notice—Onus of Proof—*Criminal Law—Larceny by a Trick—Goods on Sale or Return—Power Given to Pass Property in Goods—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 23.*—Where the contract for sale of a chattel is voidable by the seller as against the buyer on account of fraud practised by the buyer upon the seller, and, before any election to avoid the sale by the seller, the buyer pledges the chattel to secure an advance, the onus lies on the seller who seeks to avoid the sale and recover the chattel from the pledgee of proving that the pledgee took the chattel with notice of the fraud or otherwise than in good faith.

Semble, that, where the owner of an article is induced, by a false representation made by another with fraudulent intent that he has a customer who desires to purchase such an article, to deliver the article to that other on sale or return for the purpose of his endeavouring to get the supposed customer to buy it from him, the case is one not of larceny by a trick, but of obtaining goods by fraud.

WHITEHORN BROTHERS v. DAVISON, [1911] 1 [K. B. 463; 80 L. J. K. B. 425; 104 L. T. 234—C. A.]

2. Contract to Construct Railway—False Representations as to Nature of Work—Completion of Work—Damages—Quantum Meruit.]

11. Misrepresentation—Continued.

—A railway company invited tenders for the construction of a line of railway, and, for the information of intending offerers, exhibited what purported to be a journal of bores taken along the proposed line. A lump sum written contract was concluded, which stated that the company did not guarantee the accuracy of the journal of bores, and would not be liable for claims in respect of any error in, or omission from, the specification of work prepared by them. The constructors were also bound by the contract (*inter alia*) to make good any injury to water pipes caused by their operations. During the progress of the work it was discovered that the nature of the ground was materially different from that which the journal of bores represented it to be, and it ultimately appeared that the bores had been taken by railway servants of the company, who, as the company knew, had no skill in such work, and that the so-called journal was not a record kept by the borers, but was compiled by the company's engineer from notes supplied by the borers. In compiling the "journal," the engineer had in several instances inserted, not what the borers said, but what the engineer thought that they meant, with the result that ground was called "soft" when in reality it consisted, and had been reported by the borers to consist, of "hard" material. It was also discovered that a bridge was required to be built at great expense to carry certain water pipes, the existence of which was perfectly well known to the railway company, but was not disclosed by them to the contractors. In consequence of these circumstances the work cost far more than the contract price, on account both of the extra labour required and of the disorganisation caused by the unexpected obstacles. The contractors made frequent protests while the work was in progress, but were induced to continue by assurances on the part of the company, and by some extra payments. After the completion of the line the contractors brought an action against the railway company for the extra cost of construction.

HELD—that the misrepresentations by the company's engineer with regard to the bores amounted to fraud inducing the contract; that the inaccuracies were consequently not covered by the protective clauses of the contract; and that the contractors were entitled to fair and reasonable remuneration for the work done on the basis of *quantum meruit*, or alternatively damages, ascertained on a *quantum meruit* basis.

BOYD AND FORREST v. GLASGOW AND SOUTH [WESTERN RY. CO., [1911] S. C. 33; 48 Sc. L. R. 157—Ct. of Sess.

(b) Innocent Misrepresentation.

See also **INSURANCE, No. 7; SALE OF LAND, No. 2.**

3. Lease by Deed—Executed Contract—Right to Cancellation on Ground of Misrepresentation.—A lease by deed which has been executed by the lessee on the faith of an innocent misrepresentation on the part of the lessor and

under which the lessee has gone into possession will not be cancelled by the Court upon the ground that the execution of the deed was induced by such misrepresentation.

Legge v. Croker ((1811) 1 Ball & B. 506) followed.

ANGEL v. JAY, [1911] 1 K. B. 666; 80 L. J. [K. B. 458; 103 L. T. 809; 55 Sol. Jo. 140—Div. Ct.

4. Contract—Rescission—Lease Perfected by Deed.—An agreement for a lease, duly perfected by a deed, cannot be set aside for innocent misrepresentation.

MILCH v. COBURN, 27 T. L. R. 170; 55 Sol. Jo. [170—Joyce, J.

See S. C. on appeal under **LANDLORD AND TENANT, VII.**

(c) Misrepresentation as to Nature of Documents.

See **ESTOPPEL, No. 2.**

MISTAKE.

See also **CONTRACT, No. 3; LIMITATION; OF ACTIONS, Nos. 6, 7; MASTER AND SERVANT, No. 25.**

1. Money Paid under Mistake of Fact—Future Liability—No Legal Liability when Money Paid.—By a standing agreement between the plaintiff and K. & Co., bankers in New York, a Mexican company was allowed to overdraw its account with K. & Co. up to £500, while the plaintiff, on being advised and as occasion required, paid £500 into K. & Co.'s account with the defendants in London. Accordingly the plaintiff, having received a letter from K. & Co. on October 30th, instructed his bankers to pay £500 to the defendants to be placed to K. & Co.'s credit, and this was done on October 31st. On October 30th K. & Co. stopped payment, but this fact was not known in England till after the £500 had been paid to the defendants by the plaintiff. Immediately on becoming aware of the stoppage of payment by K. & Co. the plaintiff applied to the defendants for repayment of the £500. K. & Co. were largely indebted to the defendants, and the latter, who had done no more than make an entry in their books of the receipt of the £500, claimed to retain that sum in reduction of K. & Co.'s indebtedness. The Mexican company's account with K. & Co. had not in fact been overdrawn.

HELD—that, as the plaintiff had paid the £500 under a mistake as to the true state of affairs, he was entitled to recover it from the defendants.

Decision of C. A. (102 L. T. 674; 26 T. L. R. 404; 15 Com. Cas. 241) reversed.

KERRISON v. GLYN, MILLS, CURRIE & Co., 28 [T. L. R. 106; 56 Sol. Jo. 139—H. L.

MONEY AND MONEY-LENDERS.

I. CLAIMS FOR INTEREST . . .	COL. 425
II. LOANS BY MONEY-LENDERS . . .	425
[No paragraphs in this vol. of the Digest.]	
III. THE MONEY-LENDERS ACT, 1900.	
(a) Scope of Act . . .	425
(b) Registration . . .	426
(c) Re-opening Transaction . . .	428
(d) Miscellaneous . . .	428
IV. APPROPRIATION OF PAYMENTS . . .	429

See also BANKRUPTCY, No. 23; EQUITY, No. 1; INNS, No. 1.

I. CLAIMS FOR INTEREST.

See III. (c), *infra*.

II. LOANS BY MONEY-LENDERS.

[No paragraphs in this vol. of the Digest.]

III. THE MONEY-LENDERS ACT, 1900.

See also DISCOVERY, No. 6: PRACTICE, No. 42.

(a) Scope of Act.

1. *Bankruptcy—Proof—Unregistered Money-lender—Money-lending Transactions—Illegal Contract—Judgment in Default of Defence—Subsequent Arrangement not to Enforce Judgment—Payment by Instalments—Agreement “with respect to the Advance and Repayment of Money”—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, (1) (c).*—S., an unregistered money-lender, became the holder of certain promissory notes made by C. in respect of a money-lending transaction and obtained judgment in default of defence against C. in an action upon the notes. An arrangement was subsequently made whereby C. agreed to pay the debt with certain interest by instalments, and all further proceedings upon the judgment were to be stayed. C. having been adjudicated a bankrupt, S. claimed to prove in the bankruptcy for the amount due under the arrangement:—

HELD—(1) that the arrangement was an agreement entered into by the money-lender in the course of his business as a money-lender “with respect to the advance and repayment of money” within sect. 2, sub-sect. 1 (c), of the Money-lenders Act, 1900; and (2) that, the original transaction being unlawful, the judgment would not have been conclusive against the trustee for the purposes of proof, and the subsequent arrangement did not prevent the Court from going behind the transaction and rejecting the proof.

IN RE CAMPBELL, EX PARTE SEAL, [1911] 2 [K. B. 992; 105 L. T. 529—C. A.]

2. *Person Carrying on Business as Money-lender—Onus of Proof—Evidence of Number of Loan Transactions—Volume of Business—Transactions to be Included—Money-lenders Act, 1900 (63 & 64 Vict. c. 51).*—When, in answer to a claim for money lent, the defence is set up that

the person seeking to recover is carrying on business as a money-lender and is not registered under the Money-lenders Act, 1900, the onus of proving this fact is upon the defendant. In determining the question whether the business of a person is that of money-lending the whole of the transactions by way of loan into which he has entered must be considered, including those cases which may fall within the exceptions to sect. 6 of the Money-lenders Act, 1900.

A person carried on business as a jeweller and lent money to customers and persons who came in contact with him in connection with his jewellery business.

HELD—that such loans did not fall within the exception contained in sect. 6, sub-sect. (d), of the Money-lenders Act, 1900, as being loans made in the course of and for the purpose of a business not having for its primary object the lending of money.

FAGOT v. FINE, 105 L. T. 583; 56 Sol. Jo. 35—[Div. Ct.]

(b) Registration.

3. *Carrying on Business at Registered Address—“Usual Trade Name”—Carrying on Two Businesses in Different Names at Different Addresses—Effect of Registration—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2.*—The expression “usual trade name” in sect. 2 (1) (a) of the Money-lenders Act, 1900, means the name in which the money-lender was carrying on business before the date of registration.

A money-lender cannot carry on business at one address under his own or usual trade name and at another address as a partner of a firm registered under a different name.

Sect. 2, sub-sect. 1 (c), of the Act is meant to strike at the case of a person actually registered by the Commissioners of Inland Revenue as a money-lender contracting otherwise than in his registered name. So long as the money-lender's name remains on the register his contracts in that name are valid, notwithstanding that the particular name may have been wrongly put upon the register.

Decision of C. A. ([1910] 1 K. B. 868; 79 L. J. K. B. 786; 102 L. T. 472; 26 T. L. R. 372; 54 Sol. Jo. 375) reversed.

WHITEMAN v. SADLER, [1910] A. C. 514; 79 [L. J. K. B. 1050; 103 L. T. 296; 26 T. L. R. 655; 54 Sol. Jo. 718; 17 Manson, 296; 48 Sc. L. R. 713—H. L.]

4. *Security Taken in Other than Registered Name—Form of Deed—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2.*—R., the beneficiary under a will, in consideration of £400 paid to him by one Levine, a money-lender, who carried on business under the registered name of Leslie, transferred to Levine £800, part of the share to which he was entitled under the will. The deed purported to be an out-and-out transfer of the £800 to Levine in his individual name, and contained no covenant by R. to pay the £800 or any sum of money or interest.

HELD—that, notwithstanding the form of the deed, it was a security for money given to

III. The Money-lenders Act, 1900—Continued.

Levine in the course of his business as a money-lender, and, as it had not been taken by him in his registered name of Leslie, it was void under sect. 2, sub-sect. (1) (c), of the Money-lenders Act, 1900.

Decision of Neville, J. (27 T. L. R. 22) affirmed.

IN RE ROBINSON, CLARKSON v. ROBINSON
[(No. 1), 101 L. T. 712; 27 T. L. R. 441—
C. A.]

5. *Carrying on Business in Other than Registered Name—Immaterial Variation in Name—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.]—S. P. was registered as a money-lender under the name of the "Wentworth Loan and Discount Office, of 27, Strafford Houses, Wentworth-street, E." She lent money to the defendants on promissory notes, which were upon printed forms and which described her as S. P., of the "Wentworth Loan and Discount Company, of Strafford Houses, Wentworth-street, E." In an action by the plaintiff on the promissory notes, the defendants contended that as the word "company" appeared on the notes instead of the word "office" the plaintiff was not trading in her registered name within sect. 2 of the Money-lenders Act, 1900. The county court judge gave judgment for the plaintiff on the ground that the variation in the description of the plaintiff had not deceived the defendants.

HELD—that it was open to the county court judge to say that the distinction was so small as not to amount to a difference in the description, and, further, that he was entitled to say that he was not satisfied that the single transaction was sufficient to force him to the conclusion that the plaintiff was carrying on business in any other than her registered name.

WENTWORTH LOAN AND DISCOUNT Co. v.
[LEFKOWITZ, 105 L. T. 585; 28 T. L. R. 31;
56 Sol. Jo. 54—Div. Ct.]

6. *Partners in Firm not Duly Registered—Security Transferred to Bonâ Fide Assignee—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.]—Where the partners in a firm of money-lenders are not duly registered in accordance with the provisions of the Money-lenders Act, 1900, securities taken in the name of the firm are void, not only in the hands of the firm, but also in the hands of an assignee who takes for value and without notice of any defect in the registration of the firm.

Decision of Neville, J. ([1910] 2 Ch. 571; 80 L. J. Ch. 39; 103 L. T. 497; 27 T. L. R. 37) affirmed.

IN RE ROBINSON, CLARKSON v. ROBINSON
[(No. 2), [1911] 1 Ch. 230; 80 L. J. Ch. 309;
103 L. T. 857; 27 T. L. R. 182—C. A.]

7. *Carrying on Business in Different Names at Two Addresses—Effect of Registration of Both Names—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.]—The appellant carried on the business of a money-lender in his registered name at one address, and at the same time he carried

on the like business at a different address in partnership with his father under another registered name.

HELD—that by so doing he had committed an offence, and was liable to the penalty imposed by sect. 2, sub-sect. 2, of the Money-lenders Act, 1900.

Observations in *Whiteman v. Sadler* ([1910] A. C. 514) distinguished.

WHITEMAN v. DIRECTOR OF PUBLIC PROSECUTIONS, [1911] 1 K. B. 824; 80 L. J. K. B. 681;
104 L. T. 102; 75 J. P. 136; 27 T. L. R. 180—
Div. Ct.]

(c) Re-opening Transaction.

See also No. 1, *supra*.

8. *"Harsh and Unconscionable"—Excessive Interest—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 1.]—The Court, being of opinion that the interest charged was, in the circumstances, excessive, reduced it to 50 per cent.

L. FORTESCUE, LD. v. BRADSHAW, 27 T. L. R. 251
[—Pickford, J.]

9. *"Harsh and Unconscionable"—Excessive Interest—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 1.]—The Court, being of opinion that the rate of interest charged was, in the circumstances, excessive, reduced it to 30 per cent.

WHEATLEY v. PART, 27 T. L. R. 303—Pickford, J.]

10. *"Harsh and Unconscionable"—Excessive Interest—Expectant Heir—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 1.]—In cases under the Money-lenders Act, 1900, where the Court is asked to re-open a transaction on the ground that the interest charged is excessive, all the circumstances, such as time and risk, and, further, whether the interest was deducted in cash or still remained in the region of speculation, have to be taken into consideration. Merely to say that the percentage of interest is too high affords no assistance to the Court in determining the question.

Quare, whether the equitable rule that in money-lending transactions with an expectant heir the onus is on the money-lender to prove that the transaction is fair, and that if it is not fair only 5 per cent. interest is allowed, applies where the expectant heir is of full age.

J. KING, LD. v. HAY CURRIE, 28 T. L. R. 10—
[Scrutton, J.]

(d) Miscellaneous.

See also DISCOVERY, No. 6.

11. *Sending Circular to Infant Inviting Him to Borrow Money—Reasonable Ground for Believing that Circular only Sent to Persons of Full Age—Betting and Loans (Infants) Act, 1892* (55 Vict. c. 4), s. 2.—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 5.]—The respondent, who was a money-lender, was summoned for having sent a circular to an infant inviting him to borrow money contrary to the Betting and Loans (Infants) Act, 1892. The respondent had given

III. The Money-lenders Act, 1900—Continued.

instructions to his clerk to send out circulars to captains and lieutenants in the Army, but, knowing that many second lieutenants were minors, he directed the clerk to send no circulars to second lieutenants. Without his knowledge the clerk sent a circular to a second lieutenant who was in fact under twenty-one. The magistrate held that as the respondent had distinctly told his clerk not to send the circular to second lieutenants he did not send or cause to be sent the circular in question, and that even if he were bound by the act of his clerk he had reasonable ground for believing that all persons to whom the circulars were sent were of full age; he accordingly dismissed the summons.

HELD—that there was evidence upon which the magistrate could so find.

DIRECTOR OF PUBLIC PROSECUTIONS *v.* WITKOWSKI, 104 L. T. 453; 75 J. P. 171; 27 T. L. R. 211—Div. Ct.

IV. APPROPRIATION OF PAYMENTS.

See also BANKRUPTCY, No. 23.

12. *Intention—Rule in Clayton's Case.*—Under an agreement between the plaintiff and one L. the plaintiff made advances on goods consigned to him by L., such advances being in account current, and each set of goods being subject to a general lien for all advances. The plaintiff also discounted bills for L., entering all his advances, discounts, and securities in one current account. In discounting bills for L. the plaintiff immediately credited him with their full amount without waiting till they were paid.

HELD—that the plaintiff did not thereby appropriate the entries of the face value of discounted bills not yet due as payment of actual advances on other bills still unpaid.

GALULA *v.* PINTUS, 104 L. T. 574; 27 T. L. R. [382; 16 Com. Cas. 185—Scrutton, J.

MONOPOLIES.

See TRADE.

MONUMENTS.

See CHARITIES; ECCLESIASTICAL LAW; WILLS.

MORTGAGE.

I. ACCOUNTS	COL. 430
[No paragraphs in this vol. of the Digest.]	
II. ASSIGNMENTS	431
[No paragraphs in this vol. of the Digest.]	
III. CONSTRUCTION AND OPERATION	431
[No paragraphs in this vol. of the Digest.]	
IV. EQUITABLE MORTGAGES.	
(a) General	431
[No paragraphs in this vol. of the Digest.]	

IV. EQUITABLE MORTGAGES—Continued.

(b) By Deposit 431

[No paragraphs in this vol. of the Digest.]

V. EQUITY OF REDEMPTION . . . 431

VI. FIXTURES 431

[No paragraphs in this vol. of the Digest.]

VII. FORECLOSURE 431

[No paragraphs in this vol. of the Digest.]

VIII. FRAUD 431

[No paragraphs in this vol. of the Digest.]

IX. FURTHER ADVANCES 431

X. GENERAL 432

XI. INTEREST 432

[No paragraphs in this vol. of the Digest.]

XII. LEASES 432

XIII. MARRIED WOMEN 433

XIV. PARTNERSHIP 433

[No paragraphs in this vol. of the Digest.]

XV. PAYMENTS 434

XVI. POLICIES OF LIFE ASSURANCE . 434

[No paragraphs in this vol. of the Digest.]

XVII. POWER OF SALE 434

[No paragraphs in this vol. of the Digest.]

XVIII. PRACTICE 434

XIX. PRIORITIES.

(a) General 435

[No paragraphs in this vol. of the Digest.]

(b) Notice 435

[No paragraphs in this vol. of the Digest.]

(c) Possession of Title Deeds . . 435

[No paragraphs in this vol. of the Digest.]

XX. RECEIVER 435

XXI. REDEMPTION.

(a) Accounts and Costs . . . 435

(b) Clogging 436

(c) Consolidation 436

[No paragraphs in this vol. of the Digest.]

XXII. RESTRICTIVE COVENANTS . . 436

[No paragraphs in this vol. of the Digest.]

XXIII. SALE 436

XXIV. SETTLED LANDS 436

[No paragraphs in this vol. of the Digest.]

XXV. SOLICITOR MORTGAGEE . . . 436

[No paragraphs in this vol. of the Digest.]

XXVI. SURETY 436

[No paragraphs in this vol. of the Digest.]

XXVII. TRANSFER 436

[No paragraphs in this vol. of the Digest.]

XXVIII. TRUSTEES 436

See also BUILDING SOCIETIES, No. 1; COMPANIES, No. 11; COMPULSORY PURCHASE, No. 3; DEPENDENCIES, No. 21; PRACTICE, No. 37; RENT-CHARGES, No. 1; SETTLEMENTS, No. 18.

I. ACCOUNTS.

[No paragraphs in this vol. of the Digest.]

II. ASSIGNMENTS.

[No paragraphs in this vol. of the Digest.]

III. CONSTRUCTION AND OPERATION.

[No paragraphs in this vol. of the Digest.]

IV. EQUITABLE MORTGAGES.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) By Deposit.

[No paragraphs in this vol. of the Digest.]

V. EQUITY OF REDEMPTION.

1. *Purchase—Contingent Reversionary Interest—Implied Liability of Purchaser to Indemnify Vendor against Mortgage Debt—Interest Vesting in Possession—Express Indemnity—Exclusion of Implied Indemnity.*—The application of the general rule in equity which, in the absence of express contract to the contrary, throws upon the purchaser of an equity of redemption the implied obligation of indemnifying the vendor against liability under the mortgage deed may be negated by the circumstances of the case and by the relations of the parties as expressed in the purchase deed.

Where the deed of assignment of an equity of redemption provides for an express and limited indemnity, the fuller indemnity which might otherwise be implied is excluded.

Decision of Eve, J. ([1911] 1 Ch. 669; 80 L. J. Ch. 334; 104 L. T. 632; 27 T. L. R. 366; 55 Sol. Jo. 408) affirmed.

MILLS v. UNITED COUNTIES BANK, LD., [1911] [W. N. 212; 28 T. L. R. 40—C. A.]

VI. FIXTURES.

[No paragraphs in this vol. of the Digest.]

VII. FORECLOSURE.

[No paragraphs in this vol. of the Digest.]

VIII. FRAUD.

[No paragraphs in this vol. of the Digest.]

IX. FURTHER ADVANCES.

2. *Priority—Merger—Reconveyance and New Mortgage without Notice of Intermediate Charge—Effect of Release of Part of Security.*—O. in 1900 mortgaged the Lower Brow Farm to A., and in 1901 he gave M. a collateral security on the same property and on the Gibbett Street property (on which M. had already a first mortgage for £500). In 1905 O. gave A. a further charge on the Lower Brow Farm. In 1907 O. agreed to sell this farm to L., who obtained the money to pay off A.'s mortgage from F., L. supplying the money required to pay off A.'s further charge. The transaction was carried out by (1) a reconveyance by A. to O. free from A.'s mortgage and further charge, (2) a conveyance by O. to L., and (3) a mortgage by L. to F. Neither L. nor F. had knowledge or notice of M.'s further charge, the fact of the existence of which was suppressed by O. Both the properties were in Yorkshire

and all the securities were duly registered in the West Riding Registry. M., O., and L. in 1910 arranged that L. should purchase the Gibbett Street property for £500, of which he paid M. £50, the balance being advanced by a building society. M. transferred the balance of £450 due to him to the society, and conveyed to it the Gibbett Street property subject to a new proviso for redemption but freed from all claims under M.'s collateral security of 1901. O. then conveyed the equity of redemption to L.

HELD—(1) that A.'s mortgage and further charge on the Lower Brow Farm had not merged by the transaction of 1907, but that F.'s security had priority over M.'s collateral security of 1901; but (2) that the release in 1910 of the Gibbett Street property by M. from that security would not disentitle him to enforce his charge on the Lower Brow Farm.

Toulmin v. Steere ((1817) 3 Mer. 210) distinguished.

The subject of merger of charges considered.

MANKS v. WHITELEY, [1911] 2 Ch. 448; 80 [L. J. Ch. 696; 105 L. T. 504—Parker, J.]

X. GENERAL.

3. *Mortgage of Land subject to Rent-charge—Possession of Land not taken by Mortgagee—Liability of Mortgagee for Rent—Terre Tenant—"Possession."*—A mortgagee in fee of land which is subject to a rent-charge is personally liable to pay the rent-charge although he has never been in possession.

CUNDIFF v. FITZSIMMONS, [1911] 1 K. B. 513; [80 L. J. K. B. 422; 103 L. T. 811.]

See S. C. under RENT-CHARGES, I.

XI. INTEREST.

[No paragraphs in this vol. of the Digest.]

XII. LEASES.

4. *Mortgage by Sub-demise of Registered Leaseholds—Sale under Statutory Power—Duty of Vendor to Place Himself on the Register—Land Transfer Act, 1897 (60 & 61 Vict. c. 65, s. 16 (2)).*—A mortgagee of leaseholds under a mortgage by sub-demise selling his sub-term under his statutory power of sale is not a vendor of registered land within the meaning of sect. 16, sub-sect. 2, of the Land Transfer Act, 1897, if no person has been registered as proprietor of the sub-term, even though the land has been placed upon the register by the person entitled to the leasehold reversion on his sub-term.

IN RE VOSS and SAUNDERS'S CONTRACT, [1911] 1 Ch. 42; 80 L. J. Ch. 33; 103 L. T. 493; 55 Sol. Jo. 12—Warrington, J.]

See S. C. REAL PROPERTY, No. 2.

5. *Mortgage by Sub-demise—Concurrent Leases—Validity of Second Lease—Legal Term—Surrender—Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112), s. 2.*—A second mortgage by demise of leasehold premises for a term concurrent with that granted under a prior mortgage is not a mere equitable charge, but passes a legal term,

XII. Leases—Continued.

which is an incumbrance for the discharge of which a formal surrender under seal is necessary.

The term passed by a second mortgage by demise does not become a satisfied term under sect. 2 of the Satisfied Terms Act, 1845, when the money due under the mortgage is paid off without formal surrender.

IN RE MOORE AND HULME'S CONTRACT, 56 Sol. [Jo. 89—Joyce, J.

6. Tenant in Occupation of Property Proposed to be Mortgaged—No Inquiry of Tenant by Proposing Mortgagee—Rent Paid in Advance.—By a lease in writing a house was demised to the defendant for a term of four years at a yearly rent payable quarterly; and the defendant entered under the lease. Soon after the commencement of the term the lessor agreed to accept, and the defendant paid, a lump sum in satisfaction of all rent reserved by the lease during the term. The lessor then mortgaged the premises to the plaintiff. The plaintiff knew nothing of the payment of rent in advance by the defendant, and had only seen the counter-part lease; but she had made no inquiry of the defendant before the mortgage was completed.

HELD—that the plaintiff was bound by the arrangement made between the defendant and the lessor, and could not recover from the defendant any part of the rent reserved by the lease.

GREEN v. RHEINBERG, 101 L. T. 149—C. A.

7. Mortgagee taking Possession — Rent in Arrear—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (5)—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 10.]—The principle of *Moss v. Gallimore* ((1779) 1 Doug. 279), and *Rogers v. Humphreys* ((1835) 4 Ad. & E. 299), that the mortgagor is in possession and receives the rents of the mortgaged property only by leave of the mortgagee, and the mortgagee is the reversioner expectant on leases of the mortgaged property and is entitled on taking possession of it to all arrears of rent in respect of leases made before the date of the mortgage, or subsequently thereto by authority of the mortgagee, is not affected by the provisions of sect. 25, sub-sect. 5, of the Judicature Act, 1873, or sect. 10 of the Conveyancing Act, 1881, which deal with procedure only.

IN RE IND, COOPE & CO., FISHER v. THE COMPANY, KNOX v. THE COMPANY, ARNOLD v. THE COMPANY, [1911] 2 Ch. 223; 80 L. J. Ch. 661; 105 L. T. 356; 55 Sol. Jo. 600—Warrington, J.

See S. C. COMPANIES, No. 11.

XIII. MARRIED WOMEN.

See HUSBAND AND WIFE, No. 2.

XIV. PARTNERSHIP.

[No paragraphs in this vol. of the Digest.]

XV. PAYMENTS.

See also No. 16, *infra*; TRUSTS, No. 5.

8. Delivery of Executed Reconveyance upon Payment of Moneys Due.—A mortgagor is entitled to have an executed reconveyance of the mortgaged properties handed over to him at the time when he repays what is due on the mortgage.

Walker v. Jones ((1866) L. R. 1 P. C. 50, 61) followed.

ROURKE v. ROBINSON, [1911] 1 Ch. 480; 80 L. J. [Ch. 295; 103 L. T. 895—Warrington, J.

9. Notice by Mortgagee to Mortgagor to Repay Principal — Failure by Mortgagor to Repay Money on Day Named—Liability of Mortgagor for Further Interest.—Where a mortgagee gives notice to the mortgagor to pay off the mortgage, and the mortgagor fails to do so on the date named in the notice, but immediately afterwards tenders the principal and interest, the mortgagor is not liable to pay an additional six months' interest.

In order to avoid payment of any interest after his tender of the principal has been improperly rejected, the mortgagor must either pay the money into Court, if there is any proceeding in which that can be done, or he must keep the money ready and either make no profit out of it, or if he does make a profit, for example by getting interest from a banker, he must account for same to the mortgagee.

Bartlett v. Franklin ((1867) 36 L. J. Ch. 671) distinguished.

EDMONDSON v. COPLAND, [1911] 2 Ch. 301; [80 L. J. Ch. 532; 105 L. T. 8; 27 T. L. R. 446; 55 Sol. Jo. 520—Joyce, J.

XVI. POLICIES OF LIFE ASSURANCE.

[No paragraphs in this vol. of the Digest.]

XVII. POWER OF SALE.

[No paragraphs in this vol. of the Digest.]

XVIII. PRACTICE.

See also Nos. 15, 16, *infra*.

10. Payment of Mortgage Debt—Refusal of Mortgagee to Reconvey — Appointment of Master to Reconvey—Order—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 26, 33.]—Where a mortgagee refuses, upon the payment off of the mortgage debt, to reconvey the mortgaged property, the Court may appoint a Master to execute the reconveyance on his behalf.

HOLME v. FIELDSEND, [1911] W. N. 111; 55 [Sol. Jo. 552—Warrington, J.

11. Order for Possession—Delivery of Possession by Mortgagor to Mortgagee—Exercise of Jurisdiction—R. S. C. (L.), Ord. 55, r. 7—R. S. C., Ord. 55, r. 5A.]—The words "delivery of possession by the mortgagor" in R. S. C. (L.), Ord. 55, r. 7, are not to be read as merely ancillary to a sale ordered by the Court.

The Court will in a proper case make an order for the delivery of possession of the mortgaged

XVIII. Practice—Continued.

premises by the mortgagor to the mortgagee, apart from any proceedings for sale.

Seemle, such an order will not be made as a matter of course.

BANK OF IRELAND *v.* SLATTERY, [1911] 1 I. R. [33 Meredith, M.R., Ireland.

12. Action for Sale by Puisne Mortgagee—Notice—Service of Order on Prior Mortgagee—Application for Lodgment of Title-deeds—R. S. C. (Ir.), 1905, Ord. 16, r. 40.—Ord. 16, r. 40, applies in the case of an order for sale of lands made in an action brought by a puisne mortgagee against the mortgagor for the sale of the mortgaged lands, and the Court has jurisdiction under this rule to direct the prior mortgagee to be served with notice of the order.

A prior mortgagee having been served with notice of the order for sale, the plaintiff applied for an order that the prior mortgagee should lodge the title-deeds in his possession in Court, and that they should be delivered to the plaintiff's solicitors: the prior mortgagee was willing to produce the deeds and let copies be taken pursuant to sect. 16 of the Conveyancing Act, 1881. No steps had been taken under the order of sale.

The Court, having regard to the offer of the prior mortgagee, declined to make any order.

ARMSTRONG *v.* DIXON, [1911] 1 I. R. 435—[Meredith, M.R., Ireland.

XIX. PRIORITIES.

See No. 2, *supra*.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) Notice.

[No paragraphs in this vol. of the Digest.]

(c) Possession of Title Deeds.

[No paragraphs in this vol. of the Digest.]

XX. RECEIVER.

See METROPOLIS, No. 18.

XXI. REDEMPTION.

See also No. 16, *infra*.

(a) Accounts and Costs.

See also No. 15, *infra*.

13. Payment by Mortgagor of Moneys Due—Refusal by Mortgagee to Deliver Executed Reconveyance—Costs of Redemption Action.—A mortgagee who refuses to hand over an executed reconveyance of the mortgaged properties when the moneys due to him are tendered, and thus occasions a redemption action, will not be allowed interest and costs subsequent to the date of tender and will have to pay the costs of the action.

COTTERELL *v.* STRATTON ((1872) L. R. 8 Ch. 295, 302) followed.

ROURKE *v.* ROBINSON, [1911] 1 Ch. 480; 80 [L. J. Ch. 295; 103 L. T. 895—Warrington, J.

(b) Clogging.

14. Chartered Company—Debentures—Exclusive Licence to Work Diamond Mines.—The respondents, a chartered company, contracted, "in consideration of the assistance rendered and to be rendered" by the appellants, to grant to the appellants an exclusive licence to work all diamondiferous mines in the respondents' territories. At that date the respondents owed the appellants £112,000, and it was agreed that, in lieu of repayment of this and of a proposed further advance of £100,000, debentures should be issued as a floating charge on all the respondents' property.

HELD—that the agreement to grant the exclusive licence was not part of the mortgage transaction under which the debentures were issued to the appellants, and that it was not invalid as being a clog on the equity of redemption.

Decision of C. A. ([1910] 2 Ch. 502; 80 L. J. Ch. 65; 103 L. T. 4; 26 T. L. R. 591; 54 Sol. Jo. 679) reversed.

DE BEERS CONSOLIDATED MINES, L.D. *v.* [BRITISH SOUTH AFRICA CO., [1911] W. N. 245; 28 T. L. R. 114; 56 Sol. Jo. 175—H. L. *See* S. C. under COMPANIES, IX. (a).

(c) Consolidation.

[No paragraphs in this vol. of the Digest.]

XXII. RESTRICTIVE COVENANTS.

[No paragraphs in this vol. of the Digest.]

XXIII. SALE.

15. Realisation of Security—Surplus—Action for Account—Action in Nature of Redemption Action—Mortgagee's Costs—Discretion of Court.—The rule that a mortgagee is entitled by contract to the costs properly incident to a redemption action does not apply to an action for account against the mortgagee after he has realised his security by sale.

Tanner v. Heard ((1857) 23 Beav. 555) and *Charles v. Jones* ((1887) 35 Ch. D. 544) followed.

WILLIAMS *v.* JONES, 55 Sol. Jo. 500—Eve, J.

XXIV. SETTLED LANDS.

[No paragraphs in this vol. of the Digest.]

XXV. SOLICITOR MORTGAGEE.

[No paragraphs in this vol. of the Digest.]

XXVI. SURETY.

[No paragraphs in this vol. of the Digest.]

XXVII. TRANSFER.

[No paragraphs in this vol. of the Digest.]

XXVIII. TRUSTEES.

See also SETTLEMENTS, No. 24; TRUSTEES, Nos. 9, 10.

16. Trustee Mortgagees—Notice to Pay Off—Re-conveyance—Inability to Give Legal Estate—Owing to Absence of Mortgagee—Liability for Cost of Order to Vest Legal Estate in New

XXVIII. Trustees—Continued.

Trustee—Tender of Principal and Interest by Mortgagor—Failure to Re-Convey Legal Estate—Liability for Interest After Date of Tender.]

A mortgagor received notice to pay off the mortgage. The disappearance of one of two joint mortgagees had made it impossible for the remaining mortgagee to get in the legal estate without a vesting order. The mortgagor's solicitor made a tender of principal and interest to the managing clerk of the mortgagee's solicitor, who, in his employer's absence, had no instructions to receive it, the tender being accompanied by a demand for the immediate re-conveyance of the legal estate.

HELD—that in the absence of any misconduct by the remaining mortgagee, the costs of obtaining the vesting order were properly chargeable to the mortgagor; and that a tender made under those conditions was not a valid tender for the purpose of relieving the mortgagor from payment of interest after date of tender.

WEBBE v. CROSSE, 55 Sol. Jo. 177—Parker, J.

MORTMAIN ACTS.

See CHARITIES; REAL PROPERTY.

MOTOR CARS.

See METROPOLIS, Nos. 11, 12, 13; REVENUE, No. 5; STREET TRAFFIC, II.

MUNICIPAL CORPORATIONS.

See LOCAL GOVERNMENT.

MUSIC HALLS.

See THEATRES, MUSIC HALLS AND SHOWS.

MUSICAL COPYRIGHT.

See COPYRIGHT AND LITERARY PROPERTY.

NAME.

See TRADE MARKS AND TRADE NAMES; WILLS.

NATAL.

See DEPENDENCIES AND COLONIES.

NATURALISATION AND DENIZATION.

See ALIENS.

NAVIGABLE WATERS.

See WATERS AND WATERCOURSES.

NAVIGATION.

See SHIPPING AND NAVIGATION.

NAVY.

See ROYAL FORCES.

NEGLIGENCE.

	COL.
I. CONTRACTORS AND SUB-CONTRACTORS	438
II. CONTRIBUTORY NEGLIGENCE	439
[No paragraphs in this vol. of the Digest.]	
III. DANGEROUS EMPLOYMENT	439
[No paragraphs in this vol. of the Digest.]	
IV. DEFECTIVE PLANT	439
V. LOCAL AUTHORITIES	439
VI. LICENSEES AND VISITORS	443
[No paragraphs in this vol. of the Digest.]	
VII. LORD CAMPBELL'S ACT	444
[No paragraphs in this vol. of the Digest.]	
VIII. ONUS OF PROOF	444
IX. PROXIMATE CAUSE	444
X. RAILWAY MANAGEMENT	444
XI. TRESPASSERS	445
XII. VEHICLES—OWNERS AND DRIVERS	445
XIII. MISCELLANEOUS	446

See also ANIMALS, Nos. 2, 4; BAILMENT, No. 1; BUILDING CONTRACTS, No. 1; ESTOPPEL, No. 2; MASTER AND SERVANT, Nos. 38, 124, 125; MINES, Nos. 1, 2; NUISANCE, No. 2; SCOT-TISH LAW, No. 5; SHIPPING, No. 4; TRAMWAYS, No. 2.

I. CONTRACTORS AND SUB-CONTRACTORS.

1. *Public Body—Contract for Discharge of Duty—Liability for Contractor's Negligence—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 42, 45.*—The Beaconsfield Rural District Council had undertaken, under powers given to them by the Public Health Act, 1875, the cleansing of cesspools in part of their district. They entered into a contract with H. that he should keep the cesspools clear. The contract did not contain any express provision as

I. Contractors and Sub-contractors—Continued.

to disposal of the sewage matter emptied out of the cesspools. H.'s men had without leave deposited the sewage on the land of the plaintiffs, who brought an action against the council and H. for damages.

HELD—that the council had a duty to dispose of the sewage, and on the construction of the special contract they had not contracted with H. for the discharge of this duty and were still liable for its not being discharged.

HELD, *per Buckley, L.J.*—that even if they had contracted for the discharge of this duty they would have remained liable to the plaintiffs for the contractor's failure to perform the duty.

Decision of Joyce, J. (27 T. L. R. 319; 9 L. G. R. 421) affirmed.

ROBINSON *v.* BEACONSFIELD RURAL DISTRICT [COUNCIL, [1911] 2 Ch. 188; 80 L. J. Ch. 647; 105 L. T. 121; 75 J. P. 353; 27 T. L. R. 478; 9 L. G. R. 789—C. A.

II. CONTRIBUTORY NEGLIGENCE.

[No paragraphs in this vol. of the Digest.]

III. DANGEROUS EMPLOYMENT.

[No paragraphs in this vol. of the Digest.]

IV. DEFECTIVE PLANT.

See MINES, No. 2.

V. LOCAL AUTHORITIES.

See also No. 1, *supra*; METROPOLIS, Nos. 20, 21.

2. Local Education Authority—Conveyance of Children to School—Contract for Conveyance—Injury to Child—Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (1).—The appellant, a girl of about thirteen years of age, was a pupil at a school maintained and kept by the defendants as the local education authority. The defendants, acting under the powers conferred upon them by sect. 23 (1) of the Education Act, 1902, entered into an agreement with a contractor for the conveyance to the school of children living more than two miles distant from the school. The contractor duly provided a conveyance, but it was not accompanied by a conductor or any other adult person than the driver. The appellant, who only lived about a mile from the school, was invited by the school attendance officer or was permitted by the driver to use, and did in fact use, the conveyance thus provided. While being so conveyed she was injured by falling off the step at the rear. In an action for damages brought by her against the education authority, the jury found that the injuries were due to the negligence of the driver, and the non-provision of a conductor for the vehicle. The jury also found that the appellant was carried by consent of the education authority.

HELD—that the education authority were liable to the appellant on the ground that, having provided a vehicle, it was their duty to see to the safety of the children using it.

Decision of C. A. (74 J. P. 305; 8 L. G. R. 710) reversed.

SHRIMPTON *v.* HERTFORDSHIRE COUNTY [COUNCIL, 104 L. T. 145; 75 J. P. 201; 27 T. L. R. 251; 55 Sol. Jo. 270; 9 L. G. R. 397; 48 Sc. L. R. 737—H. L.

3. Local Education Authority—Accident to Child—Liability of Teacher.—The plaintiff, a child of fourteen, was being educated at a public elementary school under the control of the defendant corporation as local education authority. The defendant Martin was a teacher in the school, who had charge of the plaintiff. In obedience to the teacher's request the plaintiff poked a fire and opened a damper in the teacher's room, and in doing so her apron caught fire and she was injured. In an action for negligence, a jury found that the teacher's request was not reasonable, and gave a verdict for the plaintiff.

HELD—that the teacher was liable, and that the education authority were also liable inasmuch as the teacher was put by them in a position in which it was intended that her commands should be obeyed by the children, and therefore that the education authority were responsible for the order given by her.

Decision of Lawrance, J. (75 J. P. 135; 27 T. L. R. 165; 9 L. G. R. 156) reversed in part. SMITH *c.* MARTIN AND KINGSTON-UPON-[HULL CORPORATION, [1911] 2 K. B. 775; 80 L. J. K. B. 1256; 105 L. T. 281; 27 T. L. R. 468; 55 Sol. Jo. 535; *sub nom.* SMITH *v.* HULL CORPORATION AND MARTIN, 75 J. P. 433; *sub nom.* MARTIN *v.* SMITH, SMITH *v.* MARTIN AND HULL CORPORATION, 9 L. G. R. 780—C. A.

4. Local Education Authority—Leaving Dangerous Material Unguarded in School Playground—Injury to Child—Liability of Education Authority and Contractor.—A contractor, who was to carry out certain repairs at a public elementary school, left a quantity of rough stuff composed of sand and lime in a truck in a corner of the school playground. The headmaster of the school gave instructions to the school caretaker to have the stuff removed, as he considered it was dangerous, and the caretaker telephoned to the contractor asking him to remove it. The stuff, however, was not removed. When the boys came out of school the stuff was left unguarded, and one of the boys threw a portion of the stuff at the plaintiff, who was also a scholar at the school, injuring his eye. In an action by the plaintiff against the education authority and the contractor for damages:—

HELD—that there was evidence upon which the jury could find that both the education authority and the contractor had been guilty of negligence.

JACKSON *v.* LONDON COUNTY COUNCIL AND CHAPPEL, 28 T. L. R. 66—Bray, J.

5. Defective Stop-cock Box in Pavement—Duty of Water Board.—The plaintiff was injured by catching her foot in one of the defendant's stop-cock boxes placed in the pavement. In an action claiming damages in respect of those

V. Local Authorities—Continued.

injuries it was proved that it was the practice of the defendants to fill up the space between the top of the stop-cock and the pavement with a wisp of straw. The instructions of the defendants were that the whole of the boxes should be rewadded when necessary three times a year. At the time of the accident to the plaintiff there was no proper wisp of straw over the stop-cock, and on the evidence the judge came to the conclusion that a sufficient wisp of straw had not been put in on the last occasion when the stop-cock box was dealt with by the defendants.

HELD—that the plaintiff was entitled to recover, inasmuch as the stop-cock box was in fact dangerous through not having the protection which the public had become accustomed to expect, due to the failure of the defendants to put a sufficient wisp of straw in the hole.

HELD, FURTHER—that there was a duty on the defendants to keep the plugging of the stop-cock box in order.

ROSENBAUM v. METROPOLITAN WATER BOARD, [103 L. T. 284; 74 J. P. 378; 26 T. L. R. 510; 8 L. G. R. 735—Channell, J.]

On appeal, the Court of Appeal, being of opinion that the question could not be satisfactorily determined on the judge's findings of fact, ordered a new trial—103 L. T. 739; 75 J. P. 12; 27 T. L. R. 103; 9 L. G. R. 315—C. A.

6. Defective Stop-cock Box in Pavement—Obligation of Water Board—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), s. 8.—The plaintiff caught her foot in a defective stop-cock box in a street outside a house, and fell and sustained injuries. The stop-cock box in question, which had been constructed in the time of the defendants' predecessors, was connected with the communication pipe which carried the supply of water from the defendants' main to the house outside which the accident occurred.

HELD—that sect. 8 of the Metropolitan Water Board (Charges) Act, 1907, applied, and that the defendants were not liable for the non-repair of the stop-cock box.

Decision of Div. Ct. ([1911] 1 K. B. 845; 80 L. J. K. B. 521; 104 L. T. 385; 75 J. P. 174; 27 T. L. R. 258; 55 Sol. Jo. 330; 9 L. G. R. 307) reversed.

BATT v. METROPOLITAN WATER BOARD, [1911] 2 K. B. 965; 80 L. J. K. B. 1354; 105 L. T. 496; 75 J. P. 545; 27 T. L. R. 579; 55 Sol. Jo. 714; 9 L. G. R. 1123—C. A.

See S. C., under METROPOLIS, X.

7. Fire-plug—Mark not Indicating Correct Position of Fire-plug—Fire-plug in Private Road Covered up—Fire—Damage—Liability of Local Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 66.—In a road which had not been taken over by the local authority there was a fire-plug, which, however, at the material time was buried in the earth to the depth of 6 inches. This had not been done by, or with the knowledge of, the defen-

dants. A plate with the letters and figures "F.P. 22ft." had been put up in the road by the defendants (who were also the water authority), but the fire-plug was some feet out of position in relation to the plate, although any one following the line from the plate would have seen the plug had it not been covered up. A fire having broken out on the plaintiff's premises, the fire brigade arrived, but, owing to the difficulty of finding the exact position of the fire-plug, the efforts of the brigade to extinguish the fire were considerably retarded, and the damage to the plaintiff's property was largely increased. In an action by the plaintiff to recover damages from the defendants for breach of duty:—

HELD—that the putting up of the denoting plate with misleading directions thereon was an act of misfeasance, and as it had caused damage to the plaintiffs, the defendants were liable.

Decision of Grantham, J. (75 J. P. 17; 27 T. L. R. 46; 8 L. G. R. 1118) reversed.

DAWSON v. BINGLEY URBAN DISTRICT [COUNCIL], [1911] 2 K. B. 149; 80 L. J. K. B. 842; 104 L. T. 659; 75 J. P. 289; 27 T. L. R. 308; 55 Sol. Jo. 346; 9 L. G. R. 502—C. A.

8. Highway—Making up Road Leading to Unfenced Ravine—Misfeasance or Non-feasance—Hidden Trap—Insufficient Lighting—Injury to Person Using Road by Falling into Ravine.—The plaintiff while driving in a motor-car, at night, along S. street in Manchester, was injured by the car falling over into a ravine at the end of the street; and in respect of his injuries he sued the defendants as the local authority. S. street was, in 1897, dedicated to the public by the then owner, and about 1904 the defendants, acting under their statutory powers, paved, kerbed, and sewered the street. As it was originally laid out, it led up to the brink of a deep ravine, which was not fenced at the time when the accident occurred, and never had been fenced. The plaintiff did not know of the existence of the ravine, nor was he warned by sufficient lighting, or otherwise, of the danger. At the trial, the jury found that the road as made up and constructed was a danger to persons lawfully using it; that the unfenced ravine was a hidden trap to persons using the street; that the defendants in opening the road to the public, after making it up and in maintaining it, did not take proper care to warn the public of the existence of the danger; that the public were invited by what the defendants had done to pass along the whole of the street as a proper highway; and that the plaintiff was not guilty of contributory negligence.

HELD—that the defendants having undertaken a duty with regard to S. street, and made it up and opened it to the public as a made-up street, were bound to exercise due care and have regard to the safety of those using it, and inasmuch as they had failed in this duty and the plaintiff had suffered damage thereby, they were liable to him for the damage he sustained.

MCCLELLAND v. MANCHESTER CORPORATION, [1912] 1 K. B. 118; 28 T. L. R. 21; 9 L. G. R. 1299—Lush, J.

V. Local Authorities—Continued.

9. *Public Highway—Drinking Fountain—Unsafe Condition—Liability of Municipal Corporation for Personal Injuries.*—During the progress of a Royal procession through a borough a man climbed up a stone drinking fountain, which belonged to the defendants, and which was situate in a public highway, where it had stood for a great many years, and dislodged the finial, or top stone, which fell and injured a boy who was standing by. In answer to an action by the boy against the corporation for damages for injuries sustained through the defective condition of the fountain, the defendants denied negligence, and alleged that the accident was due to the fountain being used for an improper purpose which they could not have anticipated. There being a conflict of evidence as to the condition of the fountain, the jury awarded the plaintiff £21 damages, and judgment was entered accordingly. Upon an application for a new trial on the grounds of no evidence of negligence, and verdict against weight of evidence:—

HELD—that the question was for the jury to decide, and that there was ample evidence to justify the verdict.

McLOUGHLIN *v.* WARRINGTON CORPORATION,
[75 J. P. 57—C. A.]

10. *Ice on Street—Averment of Failure to Regulate Flow of Fountain—Relevancy.*—A woman slipped on a piece of ice which had formed on the pavement near a fountain, and fell, sustaining fatal injuries. Her husband and certain of her children raised an action against the magistrates of the city, who had sole control of the fountain and the cleansing of the streets, in which they averred that it was the defenders' business so to regulate the fountain as to prevent an overflow, and that the ice must have been caused by an overflow.

HELD—that the pursuers' averments were irrelevant.

O'KEEFE *v.* LORD PROVOST AND MAGISTRATES
[OF EDINBURGH, [1911] S. C. 18; 48 Sc.
L. R. 50—Ct. of Sess.]

11. *Electric Explosion in Highway—Res Ipsa Loquitur.*—The plaintiff when walking in the public highway passed close to an electric lamp-post beside which there was a chamber sunk into the street. As the plaintiff was passing the lamp an explosion took place underground which caused the metal plate to open and a flash to emanate. The plaintiff sustained personal injuries and brought an action for damages for negligence against the defendants:—

HELD—that the fact of the explosion having happened was *prima facie* evidence of negligence.

FARRELL *v.* LIMERICK CORPORATION, 45 I. L. T.
[169—Palles, C.B., Ireland.]

VI. LICENSEES AND VISITORS.

[No paragraphs in this vol. of the Digest.]

VII. LORD CAMPBELL'S ACT.

[No paragraphs in this vol. of the Digest.]

VIII. ONUS OF PROOF.

12. *Cattle Straying on to Highway Unattended—Open Gate—No Evidence as to who Opened Gate.*—Cattle strayed through an open gate from a field where the defendant, the occupier of the field, kept them, on to a highway, at or about 10.30 p.m., where they occasioned an accident to the plaintiff. In an action for damages there was no evidence as to who was the person who opened the gate.

HELD—that there was no evidence upon which the county court judge could find that the defendant either by an act of his own, or by the neglect of a duty which he owed to the public, produced an obstruction of the highway by his cattle; and, therefore, that judgment should be entered for the defendant.

Decision of Div. Ct. (104 L. T. 460; 27 T. L. R. 417; 55 Sol. Jo. 500) reversed.

ELLIS *v.* BANYARD, 28 T. L. R. 122; 56 Sol. Jo.
[139—C. A.]

IX. PROXIMATE CAUSE.

See No. 7, *supra*; ESTOPPEL, No. 2.

X. RAILWAY MANAGEMENT.

13. *Action for Negligence Resulting in a Collision—Plaintiff a Trespasser and not a Passenger—No Breach of Duty or Cause of Action—Ontario.*—In an action against the appellant railroad company for damages for personal injuries resulting from collision caused by the negligence of the appellants' servants it appeared that the collision took place on the property of the appellants to which the train carrying the plaintiff, which belonged to another company, had access by their leave and licence. It further appeared that the plaintiff was a trespasser on the appellants' property and also on the said train, which to his knowledge was not at the time in use as a passenger train and in which he had taken up a precarious position on the platform and step of a carriage in disobedience of a bye-law of both companies.

HELD—that the appellants were not liable, for no breach of duty had been shown.

GRAND TRUNK RY. CO. OF CANADA *v.* BAR-
[NETT, [1911] A. C. 361; 80 L. J. P. C. 117;
104 L. T. 362; 27 T. L. R. 359; 48 Sc. L. R.
1092—P. C.]

14. *Level Crossing—Vehicular Traffic Duty of Railway Company.*—A man driving a horse and cart on a level crossing over a railway was run into by a train and killed. It appeared that the driver of the train carried out the instructions of the company, and that he was not himself guilty of negligence. A jury found that the crossing was habitually used for vehicular traffic to the knowledge of the defendants without hindrance by them, that the defendants were guilty of negligence in failing to provide sufficient safeguards for vehicular traffic having regard to the character of the

X. Railway Management—Continued.

neighbourhood, and that the accident was the result of the defendants' negligence.

HELD—that, where there was a locality of this kind, it was a question for the jury whether in all the circumstances the railway company took proper precautions, and as there was evidence to support the verdict of the jury, it should stand.

Per Pickford, J.—There was a duty upon the railway company to see that there was nothing in the nature of a trap at the crossing, and perhaps also the obligation of taking proper precautions for the protection of persons using the crossing.

JENNER v. SOUTH EASTERN RY. CO., 105 L. T. [131; 75 J. P. 419; 27 T. L. R. 445; 55 Sol. Jo. 533—Div. Ct.

15. Lines in Dockyard—Shunting Operations—Duty to Close Dock Gates or Give Warning.—A railway company owning and working lines in a dockyard is under no obligation before beginning shunting operations to shut the dock gates opening on to a public street, or to give special warning.

CLARK v. NORTH BRITISH RY. CO., 49 Sc. L. R. 1 [—Ct. of Sess.

XI. TRESPASSERS.

See No. 13, *supra*.

XII. VEHICLES—OWNERS AND DRIVERS.

See also MASTER AND SERVANT, Nos. 126, 128.

16. Tramway Driver—Failure to Stop Tram when Insufficient Room to Pass—No Evidence to go to Jury.—The driver of an electric tramcar of the defendants, being uncertain whether there was room to pass a truck meeting him in a narrow part of the road, went dead slow. After the front of his car had safely passed the truck, some onlooker shouted to him to go ahead. In the result the rear of the tramcar struck the truck and the plaintiff's husband was fatally injured. The jury having found a verdict for the plaintiff, Pickford, J., on further consideration, entered judgment for the defendants, on the ground that there was no evidence of negligence to support the verdict.

HELD—that there was sufficient evidence of negligence to go to the jury, and that their verdict must be upheld.

Decision of C. A. (75 J. P. 25) reversed.

LEAVER v. PONTYPRIDD URBAN DISTRICT COUNCIL, 56 Sol. Jo. 32—H. L.

17. Overcrowded Tramcar—Front Gate Open—Invitation to Alight—Stopping Places.—Tramway proprietors who permit a car to become overcrowded, and who keep open the collapsible gate upon the front platform, where the motor man is intended to be shut off during the journey of the car, with the result that a passenger attempting to alight by the front at a recognised place of stopping, at which the car fails to stop, is "bustled" off the

platform by the crowd behind, are guilty of actionable negligence.

Keeping the front gate open during the journey is an invitation to passengers to alight by that way.

PICKERING v. BELFAST CORPORATION, [1911] 2 [I. R. 224; 45 I. L. T. 34—C. A., Ireland.

18. Tram Car—Passenger on Platform—Sudden Jerk Backwards.—Where a passenger in a tram car goes on to the platform, he does so at his own risk, and the mere fact that the car makes a sudden jerk backwards is not evidence of negligence to go to a jury.

BRESLIN v. DUBLIN UNITED TRAMWAY CO., [45 I. L. T. 220—C. A., Ireland.

XIII. MISCELLANEOUS.

19. Negligence of Fellow Workman—Common Employment.—The doctrine of common employment does not apply as between fellow workmen.

Dictum of Pollock, C.B. ((1856) 1 H. & N 247, 250) disapproved.

LEES v. DUNKERLEY BROTHERS, [1911] A. C. [5; 80 L. J. K. B. 135; 103 L. T. 467; 55 Sol. Jo. 44; 4 B. W. C. C. 115; 48 Sc. L. R. 724—H. L.

See S. C. MASTER AND SERVANT, No. 37.

20. Accident on Board Ship—Parties Liable—Managing Owners.—A stevedore's labourer, who had been engaged in discharging a vessel, brought an action against the managing owners of the vessel to recover damages for injuries sustained by him through stepping into an open scuttle, which, as he alleged, had been negligently left uncovered through the fault of the defenders or of those for whom they were responsible.

HELD—that the defenders, as managing owners, were merely the agents of the registered owners of the vessel, and (there being no averment of personal fault) were not responsible for the accident.

M'LAUCHLAN v. HOGARTH & SON, [1911] S. C. [522; 48 Sc. L. R. 398—Ct. of Sess.

21. Public Hospital—Liability of Directors for Unskilful Treatment of Patient by Staff—Paying Patient—Special Contract.—The pursuer of an action of damages against the directors of a public hospital averred that having met with an accident by which the lower part of her thigh bone was fractured she called in a doctor, who advised her to go at once to the hospital in order to have the advantage of the medical appliances there, and in order to have the injury examined and treated; that she accordingly applied to the hospital, and was received as a paying patient therein at "the rate of £2 2s. per week for board and medical treatment, by arrangement made on the defenders' behalf with Dr. G., the defenders' house surgeon, to whom the pursuer explained the circumstances above narrated"; that the treatment of her case by the defenders' surgeons was negligent and unskilful, and resulted in injury and damage to her.

XIII. Miscellaneous—Continued.

HELD—(1) that the obligation undertaken by the directors of a public hospital towards the public is only to furnish the services of competent medical and surgical practitioners, and (2) that the pursuer had not relevantly averred any contract whereby the defenders undertook any other obligation toward the pursuer, and action therefore dismissed as irrelevant.

Hillyer v. Governors of St. Bartholomew's Hospital ([1909] 2 K. B. 820) approved.

FOOTE P. SHAW STEWART, 49 Sc. L. R. 39 Ct [of Sess]

NEGOTIABLE INSTRUMENTS.

See **BILLS OF EXCHANGE, ETC.**

NEWFOUNDLAND.

See **DEPENDENCIES AND COLONIES.**

NEW SOUTH WALES.

See **DEPENDENCIES AND COLONIES.**

NEWSPAPERS.

See **CRIMINAL LAW AND PROCEDURE; LIBEL; PRESS AND PRINTING.**

NEW ZEALAND.

See **DEPENDENCIES AND COLONIES.**

NEXT OF KIN.

See **DESCENT AND DISTRIBUTION.**

NON COMPOS MENTIS.

See **LUNATICS.**

NOTARIES.

[No paragraphs in this vol. of the Digest.]

NOTICE OF DISHONOUR.

See **BILLS OF EXCHANGE, ETC.**

NOTICE TO QUIT.

See **LANDLORD AND TENANT**

NOVATION.

See **CONTRACT; TRUSTS, No. 1.**

NUISANCE.

I. WHAT AMOUNTS TO COL.
448

II. REMEDIES.

(a) Indictment 448
[No paragraphs in this vol. of the Digest.]

(b) When Action lies 418

(c) Damages 449

(d) Injunction 449

See also **LANDLORD AND TENANT, No. 9;**
NEGLIGENCE, No. 1; WATERS, No. 3.

I. WHAT AMOUNTS TO.

1. *Noise—Exhibition—Side Shows—Interference with Comfortable Occupation of Plaintiff's Premises.*—Where the noise from side shows at an exhibition interfered with the comfortable occupation of the plaintiff's house and injuriously affected the health of his family:—

HELD—that the noise amounted to a nuisance, and that the plaintiff was entitled to an injunction and damages.

BECKER v. EARL'S COURT, LD., 56 Sol. Jo. 73—
[Eve, J.]

II. REMEDIES.**(a) Indictment.**

[No paragraphs in this vol. of the Digest.]

(b) When Action Lies.

2. *Railing of Area of House adjoining Highway Defective—Injury to Child—Liability of Owner of House.*—The plaintiff, a little boy, while playing on a highway, crept through the broken railing of the area of the defendant's house, which fronted the highway, clambered along a slate ledge on the inside of the railing, and while so doing fell and was injured. In an action claiming damages from the defendant in respect of those injuries, the jury found that the railing had been broken by a trespasser, that it was a nuisance to persons using the highway, but that the defendant was not aware of its defective condition, and that sufficient time had not elapsed for him to have found out with reasonable care.

HELD—that the defendant was not liable in respect of the nuisance created upon his premises by the action of trespassers.

HELD ALSO (*per* Moulton, L.J., and Farwell, L.J., and *semble per* Vaughan Williams, L.J.)

II. Remedies—Continued.

—that the nuisance could not be regarded as the cause of the plaintiff's injuries, inasmuch as he did not fall through the gap in the railings while using the highway, but got through the gap in order to clamber along inside the railings.

Cooke v. Midland Great Western Railway of Ireland ([1909] A. C. 229) distinguished.

Decision of Lush, J. (75 J. P. 355; 27 T. L. R. 252) affirmed.

BARKER v. HERBERT, [1911] 2 K. B. 633; 80 [L. J. K. B. 1329; 105 L. T. 349; 75 J. P. 481; 27 T. L. R. 488; 9 L. G. R. 1083—C. A.

3. Public Nuisance—Special Damage—Unauthorised Erection in Highway—Obstruction of View—Pecuniary Loss.—Where a nuisance is created by the erection of an unauthorised structure in a highway and special damage is thereby caused to a person by reason of the view from his house being obstructed, he is entitled to recover damages from the persons creating the nuisance.

CAMPBELL v. PADDINGTON BOROUGH COUNCIL, [1911] 1 K. B. 869; 80 L. J. K. B. 739; 104 L. T. 394; 75 J. P. 277; 27 T. L. R. 232; 9 L. G. R. 387—Div. Ct.

(c) Damages.

See *WATERS*, No. 5.

(d) Injunction.

See *WATERS*, No. 5.

NULLITY OF MARRIAGE.

See *HUSBAND AND WIFE*.

OATHS AND AFFIRMATIONS.

See *CRIMINAL LAW AND PROCEDURE; EVIDENCE; PRACTICE AND PROCEDURE*.

OBSCENE BOOKS.

See *CRIMINAL LAW AND PROCEDURE*.

OBSTRUCTING JUSTICE.

See *CRIMINAL LAW AND PROCEDURE*.

OFFICIAL SOLICITOR.

See *PRACTICE*, No. 44.

OLD AGE PENSIONS.

See *LOCAL GOVERNMENT*, Nos. 22, 23.

OMNIBUSES.

See *NEGLIGENCE; STREET TRAFFIC*.

ONTARIO.

See *DEPENDENCIES AND COLONIES*.

OPEN SPACES AND RECREATION GROUNDS.

See also *COMMONS; SETTLEMENTS*, No. 1.

1. Public Park—Dedication.—The Court will not readily infer dedication to the public. Where a corporation purchased fifty-three acres, forty of which were intended to be used as a public park, the Court would not infer dedication of the whole of the fifty-three acres simply because the remaining thirteen acres were not fenced off and were used by the public as part of the park.

ATTORNEY-GENERAL v. BRADFORD CORPORATION, 75 J. P. 553; 55 Sol. Jo. 715; 9 L. G. R. 1190

OVERSEERS.

See *POOR LAW*.

OYSTERS.

See *FISHERIES*.

PARENT AND CHILD.

See *BASTARDY; INFANTS*.

PARISH.

See *ECCLESIASTICAL LAW; LOCAL GOVERNMENT*.

PARISH COUNCILS.

See *LOCAL GOVERNMENT*.

PARKS.

See *OPEN SPACES*.

PARLIAMENT.

See CRIMINAL LAW, No. 50.

PARLIAMENTARY DEPOSIT.

See PRACTICE, No. 20.

PARTICULARS.

See AUCTIONS; COUNTY COURTS;
PLEADING; PRACTICE AND PRO-
CEDURE; SALE OF LAND.

PARTITION.

[No paragraphs in this vol. of the Digest.]

PARTNERSHIP.

I. CONSTITUTION OF PARTNERSHIP	COL. 451
[No paragraphs in this vol. of the Digest.]	
II. RIGHTS AND LIABILITIES OF PARTNERS.	
(a) Accounts	451
(b) Authority	452
[No paragraphs in this vol. of the Digest.]	
(c) Expulsion	452
[No paragraphs in this vol. of the Digest.]	
(d) Retiring Partner	452
[No paragraphs in this vol. of the Digest.]	
(e) Surviving Partner	452
[No paragraphs in this vol. of the Digest.]	
(f) In General	452
[No paragraphs in this vol. of the Digest.]	
III. CONTRACTS WITH PARTNERS	452
IV. DISSOLUTION	453
V. GOODWILL	454
VI. LIMITED PARTNERSHIPS	454

See also CONTEMPT, No. 2; CRIMINAL LAW, No. 62; EXECUTORS, No. 17; FRAUDULENT AND VOIDABLE CONVEYANCES, No. 1.

I. CONSTITUTION OF PARTNERSHIP.

[No paragraphs in this vol. of the Digest.]

II. RIGHTS AND LIABILITIES OF PARTNERS.

See also Nos. 2, 3, 4, *infra*; TRUSTS, No. 1

(a) Accounts.

1. *Charge on Partner's Share*—"Gains and Profits"—*Construction*—*Dissolution by Death*—*Principles on which Accounts ought to be Taken*—*Practice of Partners*—*Partnership Act,*

1890 (53 & 54 Vict. c. 39), ss. 31, 34.]—In 1889 J. G., one of three partners in a colliery, charged his one-third share and the future gains and profits in the partnership, which was dissolved by his death on April 20th, 1909, with the payment of £10,000 and interest to trustees of a deed for the benefit of his wife and family, and also covenanted to pay to the trustees all the balance of residue remaining of his share in the gains and profits of the business, such excess of the interest on the £10,000 to be divided as to two-thirds for his wife and one-third for himself.

HELD—that as between them and J. G.'s estate the trustees under the covenant were not entitled to have paid to them out of his share of the partnership assets surplus income which, although appearing in the partner's accounts as excess of receipts over expenditure during a particular year, was, by the settled practice of the partners, treated otherwise than as distributable profits and devoted to colliery equipment and replacing assets that had been worn out.

HELD, FURTHER—that from the taking of the last annual account previous to dissolution there must, in the absence of evidence of the amount appropriated to depreciation year by year, be an inquiry as to the amount to be so appropriated since the last account, the proper amount being ascertained by valuers appointed by the parties or the Court.

HELD, ALSO—that the share of any surplus which became divisible when the partnership was wound up did not come within the covenant.

Decision of Eve, J. (104 L. T. 341) affirmed.

GARWOOD *v.* GARWOOD, 105 L. T. 231—C. A.

(b) Authority.

[No paragraphs in this vol. of the Digest.]

(c) Expulsion.

[No paragraphs in this vol. of the Digest.]

(d) Retiring Partner.

[No paragraphs in this vol. of the Digest.]

(e) Surviving Partner.

[No paragraphs in this vol. of the Digest.]

(f) In General.

[No paragraphs in this vol. of the Digest.]

III. CONTRACTS WITH PARTNERS.

2. *Joint and Several Liability of Partners for Instalments of a Debt*—*Payment of Instalments out of Partnership Assets*—*Judgment Recovered for Non-payment of Later Instalments*—*Satisfaction of Judgment by one Partner alone*—*Right to Contribution*—*Right to Assignment of the Judgment*—*Breach of Statutory Obligation*—*Damages*—*Equitable Rights between the Joint Debtors*—*Suretyship*—*Claim of Surety to Release*—*Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 5.*]—D. and H., who were partners, covenanted to be jointly and severally liable to P. for payment of a debt by instalments. The earlier instalments were paid out of the partnership assets, and later ones by

III. Contracts with Partners—Continued.

D., after judgment for them had been recovered. D. demanded from P. that, in order to enforce his right to contribution against H., the judgments should be delivered to him as provided by sect. 5 of the Mercantile Law Amendment Act, 1856; but H. informed P. that D.'s right to contribution depended on the equitable rights between D. and himself, in respect of a partnership action then pending between them; upon which P. declined to hand over the judgments. D. then brought an action against P. claiming (a) delivery of the judgments; (b) damages for non-delivery; (c) a declaration that by reason of the refusal to assign the judgments D. was released from all liability in respect of any future instalments.

HELD—that the provisions of sect. 5 of the Mercantile Law Amendment Act, 1856, might be subject to the equitable relationship between the parties, and that, although P. had committed a breach of a statutory obligation in refusing to assign the judgments, yet, as D. could not have levied execution upon them without the consent of the judge in the partnership action, and without taking into account the inter-partnership rights of himself and H., he had suffered no actual damage.

HELD, FURTHER—that D. was not released from liability in respect of future instalments, inasmuch as there had been no alteration of the original conditions as to the liability of the parties; and the failure to assign the judgments would have only operated to release him if and so far as the delay in handing over might have made them less valuable.

DALE v. POWELL, POWELL v. DALE AND HOOD, [105 L. T. 291—Parker, J.]

IV. DISSOLUTION.

See also No. 1, *supra*.

3. Death of Partner—Surviving Partner appointed Executor—Valuation of Interest—Goodwill—New South Wales.—A partnership agreement between two brothers provided by clause 17 that within thirty days after the death of either partner a general account in writing should be taken of the partnership assets and debts, and that in taking such account the stock should be valued either by mutual agreement or valuation in the usual way, nothing being charged for goodwill, and the surviving partner should pay to the executors or administrators of the deceased partner his full share. On the death of one partner the surviving partner, who was also the deceased's executor, took an account of the partnership assets in the same way as the half-yearly balance-sheets had for several years been taken while both partners were alive, the only difference being that the surviving partner appointed a gentleman of wide business experience and of the highest character to check the valuation. The sum found to be due to the deceased partner's estate was duly paid.

HELD—that the valuation had been properly carried out, and that clause 17 had been complied with; and that it was not open to the residuary legatees of the deceased partner to contend that, by his appointment of the sur-

viving partner as his executor, and the consequent dual character of the surviving partner, the clause was inoperative and therefore that goodwill should have been included in the valuation.

HORDERN v. HORDERN, [1910] A. C. 465; 80 [L. J. P. C. 15; 102 L. T. 867; 26 T. L. R. 524—P. C.]

4. Partnership Action—Receiver and Manager—Appointment by Consent Order—Indemnity in Respect of Payments—Assets Insufficient—Subrogation.—A receiver and manager appointed by a consent order in a partnership action, who pays debts and incurs liabilities, is not in the same position with regard to indemnity and reimbursement as a person in a fiduciary capacity who so acts. The receiver and manager is an officer of the Court, and does not become an agent of the partners by reason of their consenting to his appointment. He is personally bound by the obligations which he incurs, and can only look for indemnity to the assets under the control of the Court and not to the partners personally. Nor can he claim to be subrogated to the rights of the partnership creditors whose debt he has paid.

BOEHM v. GOODALL, [1911] 1 Ch. 155; 80 [L. J. Ch. 86; 103 L. T. 717; 27 T. L. R. 106; 55 Sol. Jo. 108—Warrington, J.]

V. GOODWILL.

See No. 3, *supra*; DEATH DUTIES, No. 7.

VI. LIMITED PARTNERSHIPS.

5. Winding-up—Just and Equitable—Limited Partnerships Act, 1907 (7 Edw. 7, c. 24)—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 268, sub-s. 1, cl. vii.—Limited Partnerships (Winding-up) Rules, 1909.—Where a limited partnership was being carried on at a loss, and the general partner, who had made several drawings on account of profits, refused, without any sufficient reason, to sign the annual general account under which drawings in excess of profits would be repayable, and otherwise acted in a way calculated prejudicially to affect the carrying on of the business:—

HELD—that the limited partner was entitled to a winding-up order.

IN RE HUGHES & Co., [1911] 1 Ch. 342; [80 L. J. Ch. 262; 104 L. T. 410—Eady, J.]

PARTY WALLS.

See BOUNDARIES; EASEMENTS; METROPOLIS.

PATENTS AND DESIGNS.

COLL.

I. SPECIFICATION.

1. Amendment and Disclaimer . . .	455
2. Construction . . .	455
3. Disconformity . . .	455

[No paragraphs in this vol. of the Digest.]

Patents and Designs—Continued.		COL.
II. GRANT		456
III. SUBJECT-MATTER.		
1. Invention		456
[No paragraphs in this vol. of the Digest.]		
2. Combination		456
3. Novelty		456
IV. ANTICIPATION: PRIOR USE OR PRIOR PUBLICATION		456
[No paragraphs in this vol. of the Digest.]		
V. FIRST AND TRUE INVENTOR		457
[No paragraphs in this vol. of the Digest.]		
VI. UTILITY		457
[No paragraphs in this vol. of the Digest.]		
VII. ASSIGNMENT OR SALE, AND CONSTRUCTION OF AGREEMENTS THEREFOR		457
VIII. LICENCE		457
IX. PROLONGATION AND RESTORATION		457
X. MEASURE OF DAMAGES		457
XI. ACTION TO RESTRAIN THREATS		458
[No paragraphs in this vol. of the Digest.]		
XII. PRACTICE.		
1. Costs		458
2. In General		458
3. Interlocutory Injunctions		459
[No paragraphs in this vol. of the Digest.]		
4. On Petition for Revocation		459
[No paragraphs in this vol. of the Digest.]		
XIII. COMMITTAL		459
[No paragraphs in this vol. of the Digest.]		
XIV. PATENT AGENTS		459
[No paragraphs in this vol. of the Digest.]		
XV. MISCELLANEOUS CASES OF INFRINGEMENT.		
1. Colourable Imitations, etc.		459
2. In General		459
3. Importation and Infringement by Foreigner		460
[No paragraphs in this vol. of the Digest.]		
4. Repairs Constituting New Article		460
[No paragraphs in this vol. of the Digest.]		
5. Other Cases		460
[No paragraphs in this vol. of the Digest.]		
XVI. REVOCATION		460
See also COPYRIGHT, No. 1; INCOME TAX, No. 12; LABEL, No. 6.		

I. SPECIFICATION.

(1) Amendment and Disclaimer.

See No. 8, *infra*.

(2) Construction.

See No. 1, *infra*.

(3) Disconformity.

[No paragraphs in this vol. of the Digest.]

II. GRANT.

See Nos. 7, 12, 13, *infra*.

III. SUBJECT-MATTER.

(1) Invention.

[No paragraphs in this vol. of the Digest.]

(2) Combination.

1. *Infringement—Substitution of Equivalent Part.*—No one who borrows the substance of a patented invention can escape the consequences of infringement by making immaterial variations. The question always is whether the infringing apparatus is substantially the same as the apparatus said to have been infringed.

Where a patent is for a combination of parts or a process, and the combination or process, besides being itself new, produces new and useful results, everyone who produces the same results by using the essential parts of the combination or process is an infringer, even though he has in fact altered the combination or process by omitting some unessential part or step, and substituting another part or step which is in fact equivalent to the part or step he has omitted. To ascertain the essential feature of an invention, the specification must be read and interpreted by the light of what was generally known at the date of the patent.

MARCONI AND MARCONI'S WIRELESS TELEGRAPH CO., LD. *v.* BRITISH RADIO-TELEGRAPH AND TELEPHONE CO., LD., 27 T. L. R. 274; 28 R. P. C. 181—Parker, J.

(3) Novelty.

2. *Design—Alleged Infringement—Novelty and Originality Admitted—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 60 (1).*—It is the duty of a Court of justice to decide cases according to the truth and fact, and it is not bound to accept any fact as true merely because it is admitted between the parties to the action. Therefore where, in an action to restrain the infringement of a registered design, the defendant has admitted the novelty and originality of the plaintiff's design the Court is not precluded from inquiring whether the design is in fact novel and original, and, if it is of opinion that it is not so, giving judgment for the defendant on that ground.

Per Lord Halsbury: The principles by which the Court is guided in dealing with patent cases are not applicable to the cases of registered designs, and a design must be an exact reproduction of the registered design to come within the Act; a merely colourable alteration is sufficient to take it out of the Act.

Decision of C. A. (102 L. T. 409; 27 R. P. C. 152) affirmed.

GRAMOPHONE CO., LD. *v.* MAGAZINE HOLDER [Co., 104 L. T. 259; 28 R. P. C. 221; 48 Sc. L. R. 1081—H. L.]

IV. ANTICIPATION: PRIOR USE OR PRIOR PUBLICATION.

[No paragraphs in this vol. of the Digest.]

V. FIRST AND TRUE INVENTOR.

[No paragraphs in this vol. of the Digest.]

VI. UTILITY.

[No paragraphs in this vol. of the Digest.]

VII. ASSIGNMENT OR SALE, AND CONSTRUCTION OF AGREEMENTS THEREFOR.See No. 3, *infra*.**VIII. LICENCE.**

3. Transfer to Company—Royalties—Liability of Licensee.—A clause in a licence agreement for the use of certain patents provided that "the said licensee may . . . transfer the said licence to any limited liability company he may form to carry on his business, or the business connected with and arising out of said patents and this licence."

HELD—that the licensee could not under this clause rid himself of liability for royalties due under the licence agreement by transferring the licence to a company formed, not for the purpose of carrying on his business or of working the patents, but merely with the view of ridding himself of such liability.

CUMMINGS v. STEWART, [1911] 1 I. R. 236—
[Meredith, M.R., Ireland.]

IX. PROLONGATION AND RESTORATION.

4. Extension of Term—Extension as to some only of Claiming Clauses—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 18.]—Under sect. 18 of the Patents and Designs Act, 1907, the Court may extend the term of a patent as to one or more of its claiming clauses without extending it as to all the claiming clauses.

IN RE LODGE'S PATENT, [1911] 2 Ch. 46; 80 [L. J. Ch. 517; 104 L. T. 716; 27 T. L. R. 419; 28 R. P. C. 362—Parker, J.]

X. MEASURE OF DAMAGES.

5. Infringing Parts—Gas Meter—Whole Profits on Sale of Meter—Profits Attributable to Infringing Parts only—Other Devices Equally Effective.—In the assessment of damages for infringement of parts of a prepayment gas meter, it was contended by the defendants that the profits attributable to the infringing parts were only one forty-fourth of the whole profits on the sale of the gas meters, and that the functions of the infringing parts could have been performed equally well by other mechanism, the use of which would not have been an infringement.

HELD—that the profit on the whole gas meter was the proper factor for the purpose of calculating damages for infringement, and that the contention that similar results might have been otherwise obtained was no answer to a claim by a person whose invention had been infringed.

Decision of Eve, J. (27 R. P. C. 721) affirmed.

METERS, LD. v. METROPOLITAN GAS METERS, [Ld., 104 L. T. 113; 28 R. P. C. 157—C. A.]

XI. ACTION TO RESTRAIN THREATS.

[No paragraphs in this vol. of the Digest.]

XII. PRACTICE.**(1) Costs.**

6. Patent Action—Discontinuance with Leave of Court—Costs of Particulars of Objections.—*R. S. C.*, Ord. 26, r. 1; *Ord.* 53A, r. 22.]—*Ord.* 53A, r. 22, which provides that the costs of particulars of objections, delivered by the defendant in an action for infringement of patent, shall be in the discretion of the taxing Master, is applicable to actions discontinued whether with or without the leave of the Court.

BIBBY AND BARON, LD. v. STRACHAN AND HENSHAW, LD.; *SAME v. DUERDEN*, [1911] W. N. 29; 55 Sol. Jo. 235; 28 R. P. C. 305—Joyce, J.]

(2) In General.

7. Appeal from Decision of Comptroller-General—Extension of Time for Appeal—Whether Period of Vacation Counts in Time Within which Appeal is to be Brought—Special Circumstances—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 20, 26, 27—*R. S. C.*, Ord. 53A, r. 4; *Ord.* 64, r. 5.]—*Order* 53A, r. 4, provides that all appeals to the Court from any decision of the Comptroller-General of Patents and Designs under sects. 20, 26, and 27 of the Patents and Designs Act, 1907, shall be brought by petition presented to the Court within one calendar month of the decision of the Comptroller or within such further time as the Court may under special circumstances allow.

The question to be determined under this summons was whether (1) the period of vacation counted in the month within which the appeal was to be brought, and (2) whether the dilatoriness of the petitioner's agents amounted to "special circumstances" as required by *Ord.* 53A, r. 4.

HELD—that the period of vacation did count; and that the dilatoriness of the agents did not amount to special circumstances within the meaning of *Ord.* 53A, r. 4.

IN RE BELDAM'S PATENT, TURNER v. BELDAM, [1911] 1 Ch. 60; 80 L. J. Ch. 133; 103 L. T. 454; 55 Sol. Jo. 46; 27 R. P. C. 758—Parker, J.]

8. Infringement—Writ Issued After Application to Amend Specification but Before Actual Amendment—Right to Rely on Amended Specification—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 21, 22, 23.]—The plaintiffs, after applying for leave to amend their specification but before the actual amendment had been allowed, issued a writ against the defendants for an injunction to restrain an infringement of their patent.

HELD—that in that action the plaintiffs were entitled to rely upon the amended specification as the document describing the invention which they alleged had been infringed.

Observations of Lindley, L.J., in *Andrew & Co.*

XII. Practice—Continued.

v. Crossley Brothers (1892) 9 R. P. C. at p. 172) explained.

STEPNEY SPARE MOTOR WHEEL CO., LD. v. [HALL, [1911] 1 Ch. 514; 80 L. J. Ch. 391; 104 L. T. 665; 27 T. L. R. 283—Warrington, J.

9. Infringement—Judgment for the Plaintiff with Delivery up—Defendants' Right to Elect to Destroy—Motion to Vary Minutes of Judgment.—The Court refused a motion by the defendants to vary minutes of judgment delivered about five weeks earlier, whereby the defendants were ordered (*inter alia*) to make and file within fourteen days after service of the judgment upon them a full and sufficient affidavit (to be made by the secretary or other proper officer), stating what arc lamps or parts of arc lamps were in their possession or power made in infringement of the said letters patent, and within four days from the filing of such affidavit to deliver up to the plaintiffs the arc lamps or parts of arc lamps that should by such affidavit appear to be in their possession or power by adding to such minutes immediately after the words "deliver up to the plaintiffs" the words "or in the presence of the plaintiffs or their agents destroy or otherwise make unfit for use."

BRITISH WESTINGHOUSE ELECTRIC AND MANUFACTURING CO., LD. v. ELECTRICAL CO., 55 Sol. Jo. 689; 28 R. P. C. 517—Eady, J.

(3) Interlocutory Injunctions.

[No paragraphs in this vol. of the Digest.]

(4) On Petition for Revocation.

[No paragraphs in this vol. of the Digest.]

XIII. COMMITTAL.

[No paragraphs in this vol. of the Digest.]

XIV. PATENT AGENTS.

[No paragraphs in this vol. of the Digest.]

XV. MISCELLANEOUS CASES OF INFRINGEMENT.

(1) Colourable Imitations, etc.

10. Imitation—Get-up of Article—Expired Patent—Exclusive User.—After a patent has expired or been revoked, the patentee is not entitled to say that his user during the life of the patent has so far associated his name with the goods that no one else can thereafter use the lately patented article without deceiving the public or gaining the reputation of the patentee. No length of exclusive user can entitle a man to a monopoly in the manufacture and sale of a useful combination not protected by a patent.

W. EDGE & SONS, LD. v. W. NICCOLLS & [SONS, LD., [1911] 1 Ch. 5; 80 L. J. Ch. 154; 27 T. L. R. 103; 28 R. P. C. 53—C. A.

But see S. C., on appeal, under TRADE MARKS, II. (3).

(2) In General.

11. Sale of Patented Chattel—Sale Subject to Conditions—Knowledge of Purchaser.—A

patentee may make a sale of the patented chattel subject to restrictive conditions, which would not apply to the case of the sale of ordinary chattels, and the purchaser will be bound by such conditions if knowledge of them at the time of the sale is brought home to him; but the conditions will not run with the goods in the hands of all persons into whose possession they may come without notice.

Decision of High Court of Australia (7 Commonwealth L. R. 481) reversed.

NATIONAL PHONOGRAPH CO. OF AUSTRALIA v. [MENCK, [1911] A. C. 336; 80 L. J. P. C. 105; 104 L. T. 5; 27 T. L. R. 239; 28 R. P. C. 229; 48 Sc. L. R. 733—P. C.

(3) Importation and Infringement by Foreigner.

[No paragraphs in this vol. of the Digest.]

(4) Repairs Constituting new Article.

[No paragraphs in this vol. of the Digest.]

(5) Other Cases.

[No paragraphs in this vol. of the Digest.]

XVI. REVOCATION.

See also Nos. 7, 10, supra.

12. Patented Article Manufactured Mainly or Exclusively Outside United Kingdom—Extensive Manufacture by Infringers in United Kingdom—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 27.—On an application under sect. 27, subsect. 1, of the Patents and Designs Act, 1907, for the revocation of a patent on the ground that the patented article is manufactured exclusively or mainly outside the United Kingdom, the Comptroller, in comparing the extent of the manufacture at home and abroad, is entitled to take into consideration the amount of manufacture by infringers in the United Kingdom. For the purposes of the sub-section it is quite immaterial whether the article manufactured in this country is or is not manufactured in derogation of the rights of the patentee under his patent.

IN RE APPLICATION OF FIAT MOTORS, LD., [1911] 1 Ch. 66; 80 L. J. Ch. 48; 103 L. T. 453; 27 T. L. R. 74; 55 Sol. Jo. 64; 27 R. P. C. 762—Parker, J.

13. Patented Article or Process Manufactured or Carried on Exclusively or Mainly Outside the United Kingdom—Process—Cessation of Business—Sale of Remaining Stock—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 27 (1).—In considering whether a patent ought to be revoked under sect. 27, subsect. 1, of the Patents and Designs Act, 1907, on the ground that the "patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom," the Court is not bound to determine that at the precise moment when the petition was lodged there was a manufacture of the patented article or a carrying on of the patented process; a temporary cessation of manufacture and a sale of stock in the meantime will not prevent the

XVI. Revocation—Continued.

operation of the sub-section; but where the manufacture and business are entirely and permanently stopped the section will not apply merely because the remaining stock is sold after the business has come to an end.

IN RE GREEN'S APPLICATION, [1911] 1 Ch. 754;
[80 L. J. Ch. 484; 104 L. T. 629; 28 R. P. C.
423—Parker, J.

PAUPERS.

See LUNATICS; POOR LAW; PRACTICE
AND PROCEDURE.

**PAWNBROKERS AND
PLEDGES.**

See also MISREPRESENTATION, No. 1.

1. *Loan of £50 on Bill of Sale—Pawnbroker not Registered as Money-lender—Isolated Transaction—Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 6 (a)—*Pawnbrokers Act, 1872* (35 & 36 Vict. c. 93), s. 10.]—Pawnbrokers, who were not registered as money-lenders under the Money-lenders Act, 1900, lent £50 upon the security of a bill of sale. There was no evidence of any other advances of money having been made by them outside their ordinary business as pawnbrokers.

HELD—that the pawnbrokers had not by entering into one loan transaction outside their ordinary business as pawnbrokers carried on the business of money-lenders, and that the transaction therefore was not void under the Money-lenders Act, 1900.

Semble (per Ridley, J.): The exemption in the case of pawnbrokers given by sect. 6 (a) of the Money-lenders Act, 1900, extends to all pawnbroking which is not in violation of the Pawnbrokers Act, and that Act is not violated merely because more than £10 has been advanced.

NEWMAN v. OUGHTON, POND AND OUGHTON,
[CLAIMANTS, [1911] 1 K. B. 792; 80 L. J.
K. B. 673; 104 L. T. 211; 27 T. L. R.
254; 55 Sol. Jo. 272—Div. Ct.

2. *Pledge by Executor of Chattels belonging to Estate—Lapse of Fourteen Years since Testator's Death—Title of Pledge.* An executor improperly pledged certain chattels belonging to his testator's estate with the defendants. The pledge was made 14 years from the date of the testator's death, and before the estate was completely realised. The transaction, so far as the defendants were concerned, was *bonâ fide* entered into in the ordinary course of their business and without notice that the property pledged was not the absolute property of the executor.

HELD—that the defendants were entitled to

hold the chattels (subject to redemption) as *bonâ fide* purchasers for value.

SOLOMON v. ATTENBOROUGH, [1911] 2 Ch. 159;
[80 L. J. Ch. 503; 105 L. T. 11; 27
T. L. R. 471; 55 Sol. Jo. 535—Joyce, J.

PAYMENT INTO COURT.

See PRACTICE.

**PAYMENTS, APPROPRIA-
TION OF.**

See BANKERS AND BANKING; CON-
TRACTS; MONEY; MORTGAGES.

PEDIGREE.

See DIGNITIES; EVIDENCE; SALE OF
LAND.

PEDLARS.

See MARKETS AND FAIRS.

PEERAGES AND DIGNITIES.

See also SCOTTISH LAW, Nos. 1, 2.

1. *Principal Usher in Scotland—Heritable Office—Fees from Grantees of Dignities of the United Kingdom.*—A title, dignity, or honour of the United Kingdom, created and conferred since 1707, held not to be a title, dignity, or honour within the meaning of the charters and patents granted to the predecessors of the respondents as sole and principal ushers in Scotland, or within the statutes of the Scottish Parliament; and therefore that the respondents were not entitled to exact fees in respect of the creation of titles and dignities of the United Kingdom.

Decision of Ct. of Sess. ([1910] S. C. 1037; 47 Sc. L. R. 734) reversed.

LORD ADVOCATE v. WALKER TRUSTEES, [1911]
[W. N. 245; 28 T. L. R. 101; 49 Sc. L. R. 73
—H. L. (Sc.).

See S. C. under SCOTTISH LAW.

PENALTY.

See CRIMINAL LAW AND PROCEDURE
DAMAGES.

PENSION.

See DEPENDENCIES, No. 33; LOCAL GOVERNMENT, Nos. 22, 23.

PERJURY.

See CRIMINAL LAW AND PROCEDURE.

PERPETUATING TESTIMONY.

See EVIDENCE.

PERPETUITIES.

I. ACCUMULATIONS	COL. 463
II. PERPETUITIES	464

I. ACCUMULATIONS.

See also REAL PROPERTY, No. 1.

1. *Will—Accumulations of Income—Rents of Leaseholds—Provision for Liabilities under Leases—Validity of Trust—Thellusson Act* (39 & 40 Geo. 3, c. 98), ss. 1, 2.]—H. G. H., who had two sets of leasehold property at D. and N., bequeathed them by her will to trustees upon trust that they should yearly during the residue of the terms for which the property was held reserve one fourth part of the net rents and annual profits arising from the property; and upon further trust to pay the remaining three fourth parts of the rents and profits to her four nieces and her nephew, and she directed that the one fourth part thereinbefore directed to be reserved should once or oftener every year be invested, and that all income arising from the investments should be added thereto by way of accumulation, and that the same and all accumulations thereof should be held as a reserve fund to indemnify the executors and trustees from all claims for dilapidations of the leaseholds which might arise; and, subject to such indemnity and claims, upon trust for the equal benefit of her said four nieces and nephew in like manner as she had declared of the other three fourths of the rents and profits, and to the end that her said four nieces and nephew might have the benefit of an accumulated fund to meet the loss of income which would arise at the expiration of the leases of the property. The will also contained a residuary bequest. The testatrix died in 1879, and the period of twenty-one years from her death allowed by the Thellusson Act for accumulation terminated in 1900. The last of the leases expired in 1909. A sum of about £1,700 now represented the accumulations of the rents and profits of the leaseholds, after the payment of all claims for dilapidations. The question now arose to whom this fund belonged.

Held—that the trust to accumulate was valid and not within the Thellusson Act, and that the nieces and nephew were entitled to this fund under the specific disposition in their favour in the will.

Dictum of Romilly, M.R., in *Varlo v. Faden* ((1859) 27 Beav. 265) followed.

IN RE HURLBATT, *HURLBATT v. HURLBATT*. [1910] 2 Ch. 553; 80 L. J. Ch. 29; 103 L. T. 585—Warrington, J.

II. PERPETUITIES.

See also CHARITIES, No. 5; EASEMENTS, No. 1; WILLS, No. 46.

2. *Will—Minority of Tenant in Tail—Trustees to Enter—Omission of Words “by Purchase”—Receipt and Application of Rents—Surplus Rents to be Applied to Other Estates—Perpetuities—Implied Estate—Destructibility—Antecedent Estate—Construction.*]—The testator devised four estates, three of which he settled to uses in strict settlement under which an infant was now tenant in tail of the C. estate, and the rents and profits of the fourth estate were to be applied in discharging incumbrances on all the estates. The will contained a provision that if any person who, if this clause had not been inserted, would for the time being be entitled to the possession or receipt of the rents and profits of the C. estate as tenant for life or tenant in tail should be under the age of twenty-one years, then and in such case and as often as the same should happen the trustees of the will were to enter into the possession or receipt of the rents and profits of the estate, and should during the minority of such person keep up the house and manage the property, with power (inter alia) to hold manorial courts and accept surrenders of leases, and should maintain the infant, and apply the surplus rents and profits in the same way as the rents of the fourth estate.

Held [but reversed on appeal, see *infra*]—that the trustees had an implied estate anterior to and taking precedence of that of tenants in tail; that this estate was not destructible and would last during the whole of the limitations contained in the will; that the whole clause was therefore void as infringing the rule against perpetuities; but that the subsequent limitations were not affected.

Browne v. Stoughton ((1846) 14 Sim. 369) and *Turvin v. Newcome* ((1856) 3 K. & J. 16) followed.

IN RE EARL OF STAMFORD AND WARRINGTON; [PAYNE v. GREY, [1911] 1 Ch. 255; 80 L. J. Ch. 281; 104 L. T. 161; 55 Sol. Jo. 154—Warrington, J.]

REVERSED ON APPEAL, on the ground that there could not be implied any legal estate in the trustees—132 L. T. Jo. 179; 46 L. J. N. C. 821; *Times*, December 18th, 1911—C. A.

3. *Power of Appointment—Remoteness—Appointment of Absolute or Qualified Interests.*]—A testatrix gave to her daughter power to appoint certain funds by deed or will among the daughter's children or issue, limited to take

II. Perpetuities—Continued.

effect on the death of the survivor of the daughter and any husband whom she might marry.

HELD—that an appointment by the daughter, after the death of her husband, of absolute and transmissible interests was void for remoteness, the Court not being able to sever the compound event.

Seem, that qualified interests might be validly appointed under the power.

IN RE NORTON, NORTON v. NORTON, [1911]
[2 Ch. 27; 80 L. J. Ch. 119; 103 L. T. 821; 55 Sol. Jo. 169—Joyce, J.]

4. Rentcharge Granted for Long Term of Years for Charitable Purposes—Proviso as to Redemption—No Limit as to Time for Redemption.]—By an indenture made in 1747 an annuity or yearly rentcharge of £15 issuing out of certain lands was granted to M. J. and J. B., and the survivor of them, and the executors, administrators, and assigns of the survivor, for the term of 999 years, from the death of the grantor, which said annuity was subsequently declared to be upon trust for J. P. or such other person as for the time being should have the pastoral care of the congregation of the dissenting Protestants of the town of C. The said indenture contained a proviso that if the heirs, executors, administrators, or assigns of the grantor should on any of the days named for payment of the said annuity pay unto M. J. and J. B., or the survivor of them, or the executors, administrators, or assigns of the survivor, the sum of £300, in one payment, the said annuity should be no longer payable, but should determine:—

HELD—that the said proviso was void as violating the rule against perpetuities.

In re Tyrrell's Estate ([1907] 1 I. R. 292) applied.

IN RE EARL OF DONOUGHMORE'S ESTATE.
[1911] 1 I. R. 211—Wylie, J., Ireland.

PERSONAL PROPERTY.

See DESCENT AND DISTRIBUTION; HUSBAND AND WIFE; SALE OF GOODS.

PETITION OF RIGHT.

See CROWN PRACTICE; PRACTICE.

PHYSICIANS.

See MEDICINE AND PHARMACY.

PIERS.

See SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

PILOTS.

See SHIPPING AND NAVIGATION.

PISTOLS.

See REVENUE; SALE OF GOODS.

PLANS.

See BUILDERS; EVIDENCE; METROPOLIS; PUBLIC HEALTH; SALE OF LAND.

PLAY.

See COPYRIGHT; THEATRES.

PLEADING.

	COL.
I. MISCELLANEOUS	466
II. STRIKING OUT PLEADINGS . .	466
III. RAISING POINTS OF LAW . .	467
[No paragraphs in this vol. of the Digest.]	
IV. DEFAULT OF DEFENCE	467
[No paragraphs in this vol. of the Digest.]	
V. PARTICULARS	467
VI. SPECIAL PLEAS	467

See also LOCAL GOVERNMENT, No. 8.

I. MISCELLANEOUS.

1. Fraud—Evidence—Res inter alios acta—*Frauds in other Cases as Evidence of a Systematic Course of Dealing—Proof of Similar Frauds—Opening Statement of Counsel—R. S. C. (L), Ord. 19, r. 6.*—An action was brought by a life assurance company against the defendant, claiming to have a policy of assurance set aside on the ground of fraud. There was no averment in the statement of claim that the alleged fraud was part of a fraudulent system, nor any allegation that defendant had been a party to any similar acts of fraud. At the trial it was proposed, without previous notice to the defendant, to adduce evidence connected with the effecting of other policies by the defendant under similar fraudulent circumstances as evidence of a system of fraud.

HELD—that the evidence of the similar frauds would be admissible, if the substance of the allegation, that the fraud was part of a system, were stated in the statement of claim.

EDINBURGH LIFE ASSURANCE Co. v. Y., [1911]
[1 I. R. 306—Barton, J., Ireland.]

II. STRIKING OUT PLEADINGS.

2. Reasonable Cause of Action—Relief against the Crown—R. S. C., Ord. 25, r. 4.—Order 25,

II. Striking out Pleadings—Continued.

r. 4, which enables the Court or a judge to strike out any pleading on the ground that it discloses no reasonable cause of action, was never intended to apply to any pleading which raises a question of general importance or serious question of law.

DYSON *v.* ATTORNEY-GENERAL, [1911] 1 K. B. [410; 80 L. J. K. B. 531; 103 L. T. 707; 27 T. L. R. 143; 55 Sol. Jo. 168—C. A.

See S. C. under PRACTICE, IV. (a).

III. RAISING POINTS OF LAW.

[No paragraphs in this vol. of the Digest.]

IV. DEFAULT OF DEFENCE.

[No paragraphs in this vol. of the Digest.]

V. PARTICULARS.

See also HIGHWAYS, No. 9; LIBEL, No. 1.

3. *Delivery of Particulars before Defence—Libel—Insurance Company.*—In an action brought by the P. Assurance Co. against A., B., and C., the trustees of the L. Insurance Society, and D., E., and F., certain agents of the L. society, to restrain them from interfering with the business of the P. company, the statement of claim alleged (*inter alia*) that “the said D., E., F., and other agents and servants of the L. society, at the instigation of the said society and of the said D., E., and F., have for the purpose of inducing the policy-holders of the P. company to cease insuring with the P. company, and to transfer their insurances to the L. society, made grossly false statements and representations to the policy-holders in the P. company” to a certain effect, and that “D., E., and F. also themselves circulated among the policy-holders in the P. company, and caused to be circulated by other agents and servants of the L. society, a grossly libellous notice or circular imputing certain charges against the P. company, and that the said notice or circular letter continues to be circulated among the policy-holders of the P. company by the said D., E., and F.”

HELD—that, before delivering their defence, A., B., and C. were entitled to obtain from the plaintiffs further and better particulars as to the persons by whom, the localities in which, and the period within which, the alleged grossly false statements and representations were made, and also particulars as to whether any of the policy-holders to whom it was alleged the false representations were made were resident outside a certain district named by the plaintiffs, but that they were not entitled to receive particulars of the names and addresses of the several persons to whom the false representations were made.

BRITISH LEGAL AND UNITED PROVIDENT ASSURANCE Co., LD. *v.* SHEFFIELD, [1911] 1 I. R. 69—Meredith, M.R., Ireland.

VI. SPECIAL PLEAS.

See COUNTY COURTS, No. 8.

PLEDGE.

See PAWNBROKERS AND PLEDGES.

POACHING.

See GAME.

POISONS, SALE OF.

See MEDICINE AND PHARMACY.

POLICE.

See CRIMINAL LAW; LOCAL GOVERNMENT; MAGISTRATES; METROPOLIS.

POLLUTION OF RIVERS.

See NUISANCE; WATERS AND WATERCOURSES.

POOR LAW.

	COL.
I. IN GENERAL	468
[No paragraphs in this vol. of the Digest.]	
II. MAINTENANCE.	
(a) Recovery of Relief	468
(i.) <i>From Pauper</i>	468
[No paragraphs in this vol. of the Digest.]	
(ii.) <i>From Persons Liable</i>	469
(iii.) <i>In General</i>	469
[No paragraphs in this vol. of the Digest.]	
(b) Pauper Lunatics	469
(c) Bastards	470
III. OVERSEERS	471
IV. SETTLEMENT AND REMOVAL.	
(a) Derivative Settlement	471
[No paragraphs in this vol. of the Digest.]	
(b) Divided Parishes	471
[No paragraphs in this vol. of the Digest.]	
(c) Husband and Wife	471
(d) Settlement by Residence	471
(e) In General	473
[No paragraphs in this vol. of the Digest.]	
V. VAGRANCY AND OTHER OFFENCES	473
I. IN GENERAL.	
[No paragraphs in this vol. of the Digest.]	
II. MAINTENANCE.	
(a) Recovery of Relief.	
(i.) <i>From Pauper</i> .	
[No paragraphs in this vol. of the Digest.]	

II. Maintenance—Continued.

(ii.) From Persons Liable.

1. Running Away and Leaving Wife or Child Chargeable—Period within which Proceedings may be Taken—Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 19.—The period of two years prescribed by sect. 19 of the Poor Law Amendment Act, 1876, as that within which proceedings may be taken against a person who runs away and leaves his wife or his or her child chargeable to any union, begins to run at the time when the offender absconds, and, therefore, such proceedings cannot be commenced after the expiration of two years from that date.

ASHLEY v. BLAKER, 101 L. T. 682; 73 J. P. [195; 22 Cox, C. C. 208; 8 L. G. R. 1—Div. Ct.

(iii.) In General.

[No paragraphs in this vol. of the Digest.]

(b) Pauper Lunatics.

2. Expenses of Maintenance—Power of Justices to Fix Sum—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 283, 287.—The powers of justices under sect. 287 of the Lunacy Act, 1890, to make an order for the expenses of maintenance of a pauper lunatic are not confined to the ministerial act of making an order for the payment of reasonable expenses to be ascertained *aliunde*, but the justices are entitled to fix the amount to be paid, and in fixing such sum they are not limited by the provisions of sect. 283 of the Act to a sum not exceeding 14s. weekly.

Dictum of Wright, J., in *Suffolk County Lunatic Asylum v. Stow Union* (1897) 76 L. T. 494 overruled.

Where, owing to special circumstances, the application to the justices is for a sum exceeding the amount fixed by the visiting committee under sect. 283, the order ought not to be made *ex parte*; and the order, whether made *ex parte* or on notice, ought to be not absolute in form but until further order only.

Decision of Div. Ct. ([1910] 2 K. B. 547; 79 L. J. K. B. 1146; 103 L. T. 189; 74 J. P. 402; 8 L. G. R. 860) affirmed.

GLAMORGAN COUNTY ASYLUM (COMMITTEE OF VISITORS) v. CARDIFF GUARDIANS, [1911] 1 K. B. 437; 80 L. J. K. B. 578; 103 L. T. 819; 75 J. P. 28; 9 L. G. R. 212—C. A.

3. Expenses of Maintenance—Contribution by County Councils—Method of Calculating Amount of Contributions—Time of Payment—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 24 (2) (f).—For convenience, the guardians of the plaintiff union fixed September 29th as the end of the period of maintenance for each year. During the period ending in September, 1908, they received for a certain lunatic the sum of £15 12s. 1d., which, if deducted so as to ascertain the net charge on the guardians, would bring the net charge below 4s. a week, and disentitle the plaintiff union to claim anything from the defendant council under sect. 24 (2) (f)

of the Local Government Act, 1888. Of this sum £5 4s. 1d. was paid in respect of the period ending in September, 1907.

HELD—that the sum of £5 4s. 1d., being money received by the guardians for maintenance during the period of maintenance, must be ascribed to maintenance during the period ending in September, 1908, and that, therefore, the county council were not liable to pay anything for maintenance during that period.

Two pauper lunatics who had been maintained by the plaintiff union, and in respect of whom the union had received divers moneys under the above sub-section from the defendants, became entitled to certain moneys which came into the hands of the plaintiff union. The plaintiff union having brought an action against the county council for sums due in respect of the maintenance of other lunatics:—

HELD—that in such action the defendant council were entitled to set off the divers moneys above mentioned against the plaintiffs' claim.

HELD, FURTHER—that the charge of 4s. a week which may be made on a county council pursuant to sect. 24 (2) (f), although *debitum in presenti*, is *solvendum in futuro*, and cannot be recovered until the claim has been before the finance committee of the council and passed and authorised by the council.

CALNE UNION v. WILTS COUNTY COUNCIL, [1911] 1 K. B. 717; 80 L. J. K. B. 548; 104 L. T. 607; 75 J. P. 42; 9 L. G. R. 5—Hamilton, J.

(c) Bastards.

4. Child Chargeable to Union—Mother Not Subject to Incapacity—Order at Instance of Guardians—Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 71—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), ss. 5, 7—Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 41—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), ss. 2, 7.—A bastardy order was made against the appellant on the application of the child's mother, who subsequently went to America, where she was living at the time now in question, being of sound mind and not in prison. The child became chargeable to the respondents, the guardians of the union, and on an information by the respondents against the appellant under sect. 7 of the Bastardy Laws Amendment Act, 1872, the stipendiary magistrate made an order that the appellant was liable for the maintenance of the child.

HELD—that the magistrate had power to make this order at the instance of the respondents, as sect. 7 of the Bastardy Laws Amendment Act, 1872, under which it was made, was not limited to cases in which the mother was dead or incapacitated by unsoundness of mind or imprisonment, those being the incapacities mentioned in sect. 5 of the Poor Law Amendment Act, 1844.

JONES v. MERTHYR TYDFIL UNION, 105 L. T. [203; 75 J. P. 390; 9 L. G. R. 767—Div. Ct.

III. OVERSEERS.

5. *Assistant Overseer—Clerk to the Parish Council—Same Person Holding Both Offices—Fidelity Bond Given to Guardians for Conduct of Assistant Overseer—Defalcations by Officer as Clerk to Parish Council—Liability of Guarantee Association—Poor Relief Act, 1819 (59 Geo. 3, c. 12), s. 7—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 61—Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 5, 17, 81.]—The offices of assistant overseer and clerk to the parish council are separate; accordingly where the two offices are held by the same man, and a guarantee association have given the guardians a bond for the due and faithful discharge of his duties as assistant overseer, they are not liable on the bond for his defalcations as clerk to the parish council.*

COSFORD UNION AND HITCHAM PARISH
[COUNCIL *v.* POOR LAW AND LOCAL GOVERNMENT OFFICERS' MUTUAL GUARANTEE ASSOCIATION, LD., 103 L. T. 463; 75 J. P. 30; 8 L. G. R. 995—Div. Ct.]

IV. SETTLEMENT AND REMOVAL.

(a) Derivative Settlement.

[No paragraphs in this vol. of the Digest.]

(b) Divided Parishes.

[No paragraphs in this vol. of the Digest.]

(c) Husband and Wife.

6. *Married Woman Deserted by Husband—Irremovability—Settlement by Residence—Poor Removal Act, 1861 (24 & 25 Vict. c. 55), s. 3—Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 17—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ss. 34, 35.]—Although a married woman deserted by her husband can by reason of the provisions of sect. 3 of the Poor Removal Act, 1861 (as amended by sect. 17 of the Poor Law Amendment Act, 1866), become irremovable from a union by reason of her residence therein, she cannot by virtue of such residence acquire a settlement.*

PARISH OF PADDINGTON *v.* PARISH OF ST.
[MATTHEW, BETHNAL GREEN, 75 J. P. 503
—County of London Qr. Sess.]

(d) Settlement by Residence.

See also No. 6, *supra*.

7. *Child under Sixteen with Deserted Mother—Acquisition of Settlement by Residence—Poor Removal Act, 1846 (9 & 10 Vict. c. 66), ss. 1, 3—Poor Removal Act, 1848 (11 & 12 Vict. c. 111), s. 1—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ss. 34, 35.]—A legitimate child can, under sect. 34 of the Divided Parishes and Poor Law Amendment Act, 1876, before the age of sixteen, acquire a settlement by residence in a parish with its deserted mother who is irremovable therefrom.*

Mabel P. was the lawful daughter of J. P. and Maria P., and was born in Newhaven on April 13th, 1886. J. P. resided with Maria P.

until about the year 1888. In or about the year 1888 J. P. deserted Maria P., his wife, with whom he had been living at Newhaven, and he went to reside at Weymouth, where he remained until June, 1894. From the date of such desertion Maria P. continued to reside without interruption or relief in Newhaven with the pauper Mabel P. until about the year 1900. At the time of the desertion by J. P. the pauper Mabel P. was residing in Newhaven with her mother, Maria P., and Mabel P. continued there to reside without interruption or relief for the term of three years and upwards with Maria P. until about the year 1900. In or about the year 1900 the pauper Mabel P., who was then about fourteen years of age, left Newhaven and went to reside elsewhere at various places, but she had not since 1900 resided in any parish for a sufficient length of time to acquire a settlement. About the end of 1894 J. P. went to reside at Kingston-upon-Hull, and he has continued to reside within such area ever since. At the time that his daughter, the pauper Mabel P., attained the age of sixteen years—namely, on April 13th, 1902—J. P. was last legally settled in Kingston-upon-Hull, having resided there for the term of three years.

HELD—that the settlement of Mabel P. was in the parish of Newhaven.

West Ham Union v. Holbeach Union ([1905] A. C. 450) and *Fulham Parish v. Woolwich Union* ([1907] A. C. 255) followed.

Decision of Div. Ct. (80 L. J. K. B. 239; 103 L. T. 599; 75 J. P. 46; 9 L. G. R. 42) affirmed.

KINGSTON-UPON-HULL INCORPORATION FOR
[THE POOR *v.* HACKNEY UNION, [1911] 1 K. B. 748; 80 L. J. K. B. 489; 104 L. T. 300; 75 J. P. 249; 55 Sol. Jo. 289; 9 L. G. R. 416—C. A.]

8. *Illegitimate Child under Sixteen—Residence Apart from Mother—Poor Removal Acts, 1846 (9 & 10 Vict. c. 46), s. 1, and 1848 (11 & 12 Vict. c. 111), s. 1—Divided Parishes Act, 1876 (39 & 40 Vict. c. 61), s. 34.]—The word "children" in the proviso to sect. 1 of the Poor Removal Act, 1846, and in the substituted proviso in sect. 1 of the Poor Removal Act, 1848, includes both legitimate and illegitimate children.*

Decision of C. A. upon this point in *Woolwich Union v. Fulham Guardians* ([1906] 2 K. B. 240) not followed.

The pauper, an illegitimate child, aged eight and a half years, was born in the parish of B. in July, 1902, and shortly afterwards was placed by her mother under the care of persons residing in the parish of S. in the respondent union; and the pauper continued to reside with those persons in the parish of S. At no time since 1902 had the pauper resided with or been maintained by her mother, and at no time had the mother acquired a settlement in any parish in the respondent union, and at no time had she been irremovable therefrom. In January, 1911, an order of justices was obtained by the guardians of the respondent union adjudging the pauper to be settled in the parish of B. in the appellant

IV. Settlement and Removal—Continued.

union, that being the parish in which the mother of the pauper was last legally settled, and in which the pauper was born.

HELD—that the order was rightly made.

GUARDIANS OF BRAINTREE UNION *v.*
[GUARDIANS OF ROCHFORD UNION, [1911]]
W. N. 236 ; 28 T. L. R. 60—Div. Ct.

(e) In General.

[No paragraphs in this vol. of the Digest.]

V. VAGRANCY AND OTHER OFFENCES.

See also No. 1, *supra*.

9. *Running Away—Leaving Children Chargeable to Union—Evidence—Vagrancy Act, 1824* (5 Geo. 4, c. 83), ss. 3, 4.]—By sect. 4 of the Vagrancy Act, 1824, every person running away and leaving his children chargeable to any parish shall be deemed a rogue and vagabond.

The respondent took his discharge with his children from a union workhouse, and on the evening of the same day the children returned to the workhouse with a letter written by the respondent to the master, giving an address outside the union about twenty-one miles away, and stating that he was sending his children back to the master and was not running away. As the children were destitute the master re-admitted them, and they had since remained chargeable to the union. An information preferred against the respondent under the above section was dismissed by the justices on the ground that he had not run away, and that there was no evidence that he had concealed himself or gone a long distance.

HELD—that the question was a question of fact for the justices, and that on the above facts there was no rule of law obliging them to convict.

PALLIN *v.* BUCKLAND, 105 L. T. 197 ; 75 J. P. [362 ; 9 L. G. R. 544—Div. Ct.

POOR PRISONERS' DEFENCE ACT, 1903.

See CRIMINAL LAW AND PROCEDURE.

PORT AND PORT DUES.

See SHIPPING AND NAVIGATION.

POUND.

See ANIMALS, No. 5.

POWER OF ATTORNEY.

See AGENCY.

POWER OF SALE.

See BANKERS ; MORTGAGE ; SETTLEMENTS ; TRUSTS ; WILLS.

POWERS.

POWER OF APPOINTMENT.

COL.

(a) Construction	474
[No paragraphs in this vol. of the Digest.]	
(b) Exercise	474
(c) Release	476
[No paragraphs in this vol. of the Digest.]	
(d) Validity	476
(e) In General	476

POWER OF APPOINTMENT.

See also CONFLICT OF LAWS, No. 8 ;
DEATH DUTIES, No. 1 ; WILLS,
Nos. 36, 52.

(a) Construction.

[No paragraphs in this vol. of the Digest.]

(b) Exercise.

1. *General Power—Exercise by Will—Appointment of Executors and Bequest of Legacies—Estate of Donee Otherwise Insufficient to Pay Debts and Legacies—Wills Act, 1837* (7 Will. 4 & 1 Vict. c. 26), s. 27.]—When the estate of the donee of a general power of appointment by will is insufficient, apart from the fund to which the power applies, for the payment of her debts, the appointment by her will of executors and bequests of general pecuniary legacies without a residuary bequest of personal estate operate under sect. 27 of the Wills Act, 1837, as an exercise of her general power of appointment to such an extent as will enable her executor to pay, with the aid of her own property, her debts and the legacies given by the will.

Dictum of Wickens, V.-C., in *In re Davies's Trusts* ((1871) L. R. 13 Eq. 163, 166) followed.

IN RE SEABROOK, GRAY *v.* BADDELEY, [1911]
[1 Ch. 151 ; 80 L. J. Ch. 61 ; 103 L. T. 587—
Warrington, J.

2. *Special Power—Appointment Equally by Will among All the Objects—Subsequent Appointments by Deed Poll—Ademption—Rule Against Double Portions—“Portion.”*—A testator who had a special power of appointment by deed or will over a fund of which he was tenant for life exercised the power by will equally among seven objects of the power. By two deeds poll, executed subsequently, he appointed two equal seventh shares

Power of Appointment—Continued.

to F. and E., two of the objects of the power, respectively, subject to his life interest. On his death the question arose whether the remaining five seventh shares of the fund were to be divided equally among the seven objects of the power including F. and E., or whether the shares of F. and E. under the will were adeemed.

HELD—that the rule against double portions applied, and that the shares of F. and E. under the will were adeemed by the appointments to them by deed.

Montague v. Montague ((1852) 15 Beav. 565) followed.

IN RE PEEL'S SETTLEMENT, *BIDDULPH v. PEEL*, [1911] 2 Ch. 165; 80 L. J. Ch. 574; 105 L. T. 330; 55 Sol. Jo. 580—Joyce, J.

3. Construction—Residuary Personal Estate—Proceeds of Sale of Real Estate Not Included.—A testator, by his will devised real estate on trust for his daughter E. for life, and on her death for her children or remoter issue as she should appoint, and in default of appointment for her children at twenty-one or marriage. He gave his residuary estate on trust for sale and conversion, and gave the net proceeds of sale to his two daughters, of whom E. was one, her share being settled in the same way as the realty devised on trust for her. She married in his lifetime, and a portion of the real estate devised to her was settled on her. As regards the real estate settled on her the devise was inoperative, but some real estate was left on which the devise could operate. E. had six children, of whom S., a daughter, married. On S.'s marriage E. made an appointment in her favour of one-fifth of the moiety of the residuary personal estate of the testator. By her marriage settlement, to which E. was a party, S. assigned the one-fifth share to which she was entitled in expectancy on the death of E., under the appointment, in the moiety of the residuary personalty and the investments representing the same, "which investments, so far as they comprise or include such moiety, are specified in the schedule hereto," upon the trusts of the new settlement. The schedule included investments representing the proceeds of the part of the specifically devised real estate which had been sold. The settlement contained a covenant by E. to pay S. an annuity. At the date of the appointment E. was a trustee of the testator's will.

HELD—that, according to the true construction of the appointment and settlements, no part of the money arising from the sale of the real estate was included in the appointment by E.

IN RE HORSFALL, *HUDDLESTON v. CROFTON*, [1911] 2 Ch. 63; 80 L. J. Ch. 480; 104 L. T. 590—Parker, J.

4. Jointure—Power to Appoint Clear of All Charges and Outgoings Whatsoever—Liability to Estate Duty.—In exercise of a power under a settlement whereby C. was empowered to appoint

by way of jointure to his wife an annual sum not exceeding £3,000, clear of all charges and outgoings whatsoever, C. executed a settlement appointing the said sum, not expressly clear of all charges and outgoings. On the death of C.:

HELD—that the jointure so appointed was clear of all charges and outgoings, and therefore free from estate duty.

IN RE EARL CADOGAN'S SETTLEMENTS, [*RICHMOND v. LAMBTON*, 56 Sol. Jo. 11—Joyce, J.]

(c) Release.

(No paragraphs in this vol. of the Digest.)

(d) Validity.

5. Void Condition—Severance of Condition and Appointment—Condition that Appointee Should Pay Off Debts of Appointor.—A. was the life tenant of a fund, with power to appoint a life interest in the whole or part of the income to any wife who might survive him. He exercised the power in part unconditionally, and in part by appointing (if he should die insolvent) an annuity, of which the greater part was to be used in paying off his debts.

HELD—that the appointment of the annuity could not be separated from the condition, and that the execution of the power was void as being for a purpose wholly foreign to the power.

IN RE COHEN, *BROOKES v. COHEN*, [1911] 1 Ch. [37; 80 L. J. Ch. 208; 103 L. T. 626; 55 Sol. Jo. 11—Joyce, J.]

6. Perpetuities—Remoteness—Absolute or Qualified Interests.—A power was given by a testatrix to her daughter to appoint certain funds by deed or will among the daughter's children or issue, limited to take effect after the death of the survivor of the daughter and any husband she might marry.

HELD—that the appointment by the daughter after the death of her husband of absolute and transmissible interests was void for remoteness.

Semble, that qualified interests might be validly appointed by her under the power.

IN RE NORTON, *NORTON v. NORTON*, [1911] 2 Ch. 27; 80 L. J. Ch. 119; 103 L. T. 821; 55 Sol. Jo. 169—Joyce, J.

(e) In General.

7. Fraud on Power—Appointments Void or Voidable—Purchaser for Value without Notice.—An appointment under a common law power or a power operating only under the Statute of Uses, by which the legal estate has passed, is at most voidable, and a purchaser for value with the legal estate and without notice is not affected by the fraudulent execution of the power; but an appointment in fraud of an equitable power, not operating so as to pass the legal estate or interest, is void, and a purchaser for value without notice can only rely on such equitable defences as are open to purchasers without the legal title who are subsequent in time against prior equitable titles.

Power of Appointment—Continued.

Phillips v. Phillips (1862) 5 L. T. 655 and *Carrer v. Richards* (1860) 1 De G. F. & J. 548 distinguished.

Decision of *Neville, J.* ([1910] W. N. 163; 79 L. J. Ch. 640; 103 L. T. 131) affirmed.

CLOUTTE v. STOREY, [1911] 1 Ch. 18; 80 [L. J. Ch. 193; 103 L. T. 617—C. A.

See also *S. C. ESTOPPEL*, No. 1.

8. Determination of Life Interest by Bankruptcy Power of Appointment still Remaining Unexercised—Application of Income pending Appointment.]—The life interests in a marriage trust fund having ceased—the wife's by death and the husband's by bankruptcy—the fund itself vested in the three children of the marriage, but was liable to be divested by the exercise of a power of appointment among the children or other issue of the marriage still remaining in the husband notwithstanding the cesser of his life interest.

HELD—that, the three children being entitled to the fund itself, the income of the fund ought to be paid to them during the residue of the husband's life unless and until they were superseded by the exercise of the power of appointment.

Colman v. Seymour ((1748) 1 Ves. Sen. 210) followed.

IN RE MASTER'S SETTLEMENT, MASTER v. MASTER, [1911] 1 Ch. 321; 80 L. J. Ch. 190; 103 L. T. 899; 55 Sol. Jo. 170—*Eve, J.*

9. Power to Appoint among Named Persons—Default of Appointment—Implied Gift—Death of Remainderman during Life Interest.]—A bequest to A. for life, "with remainder as he shall by deed or will and in his sole discretion appoint amongst" certain named persons, creates a trust by implication, in default of appointment, for such of those persons as survive the testator, whether they survive the life tenant or not.

Wilson v. Duguid ((1883) 24 Ch. D. 244) applied.

IN RE WALFORD, KENYON v. WALFORD 55 Sol. [Jo. 384—*Joyce, J.*

PRACTICE AND PROCEDURE.

	COL.
I. SERVICE OF WRIT OF SUMMONS . . .	479
II. SERVICE OUT OF JURISDICTION.	
(a) Breach of Contract performable within Jurisdiction . . .	481
[No paragraphs in this vol. of the Digest.]	
(b) Injunction . . .	481
[No paragraphs in this vol. of the Digest.]	
(c) Miscellaneous . . .	481
(d) Necessary or Proper Party . . .	482
III. SUMMARY JUDGMENT ON SPECIALLY INDORSED WRIT . . .	483

IV. PARTIES.	COL.
(a) Attorney-General . . .	484
(b) Compromise . . .	484
(c) Joinder of Defendants. . .	485
(d) Joinder of Plaintiffs . . .	485
(e) Married Woman. . .	486
[No paragraphs in this vol. of the Digest.]	
(f) Pauper . . .	486
[No paragraphs in this vol. of the Digest.]	
(g) Representation . . .	486
(h) Substituting Plaintiff . . .	486
[No paragraphs in this vol. of the Digest.]	
(i) Third Party Procedure . . .	486
V. JOINDER OF CAUSES OF ACTION . . .	486
[No paragraphs in this vol. of the Digest.]	
VI. PAYMENT INTO COURT.	
(a) Acceptance . . .	487
[No paragraphs in this vol. of the Digest.]	
(b) Admitting Liability . . .	487
[No paragraphs in this vol. of the Digest.]	
(c) Denying Liability . . .	487
[No paragraphs in this vol. of the Digest.]	
(d) Generally . . .	487
[No paragraphs in this vol. of the Digest.]	
(e) Libel or Slander . . .	487
(f) Trustees . . .	487
[No paragraphs in this vol. of the Digest.]	
VII. PAYMENT OUT OF FUND IN COURT . . .	487
VIII. ACTION FOR DECLARATION . . .	488
IX. DISCONTINUANCE . . .	488
X. TRIAL.	
(a) Miscellaneous . . .	488
[No paragraphs in this vol. of the Digest.]	
(b) Notice of Trial . . .	488
[No paragraphs in this vol. of the Digest.]	
(c) Place of Trial . . .	488
[No paragraphs in this vol. of the Digest.]	
(d) Right to Jury . . .	488
[No paragraphs in this vol. of the Digest.]	
XI. MOTION FOR NEW TRIAL.	
(a) Costs . . .	488
[No paragraphs in this vol. of the Digest.]	
(b) Grounds for ordering New Trial . . .	488
(c) Time for serving Notice . . .	489
[No paragraphs in this vol. of the Digest.]	
XII. JUDGMENT . . .	489
XIII. EXECUTION.	
(a) Discovery in Aid . . .	489
[No paragraphs in this vol. of the Digest.]	
(b) Scottish Judgment . . .	489
[No paragraphs in this vol. of the Digest.]	
(c) Sequestration . . .	489
(d) Stay . . .	489
[No paragraphs in this vol. of the Digest.]	
(e) Writ of Possession . . .	489
[No paragraphs in this vol. of the Digest.]	
(f) In General . . .	489
[No paragraphs in this vol. of the Digest.]	
XIV. ATTACHMENT OF DEBTS . . .	489
[No paragraphs in this vol. of the Digest.]	

Practice and Procedure—Continued.

XV. CHARGING ORDERS	489
XVI. EQUITABLE EXECUTION	490
XVII. ACTIONS BY AND AGAINST FIRMS	490
[No paragraphs in this vol. of the Digest.]	
XVIII. TRANSFER AND CONSOLIDATION OF ACTIONS	490
XIX. MOTIONS	490
XX. ORIGINATING SUMMONS	490
XXI. CHAMBERS IN CHANCERY DIVISION	491
XXII. APPEALS.	
(a) Appeals to Court of Appeal	491
(b) Appeals to House of Lords	491
(c) Arbitration Appeals	492
[No paragraphs in this vol. of the Digest.]	
(d) Divisional Court	492
(e) Final and Interlocutory Orders	492
[No paragraphs in this vol. of the Digest.]	
(f) Generally	492
(g) Official Referee	492
[No paragraphs in this vol. of the Digest.]	
(h) Security for Costs	492
(i) Time for Appeal	492
XXIII. COSTS	
(a) Appeal	493
(b) Apportionment	493
[No paragraphs in this vol. of the Digest.]	
(c) Discretion of Judge	493
(d) Documents	493
(e) Independent Proceedings	494
[No paragraphs in this vol. of the Digest.]	
(f) Miscellaneous	494
(g) Security for Costs	494
(h) Taxation generally	496
(i) Trustees and Executors	496
[No paragraphs in this vol. of the Digest.]	
(k) Two Defendants	496
[No paragraphs in this vol. of the Digest.]	
XXIV. STAY OF PROCEEDINGS.	
(a) Actions in different Courts	496
(b) Frivolous and Vexatious Actions	497
(c) Miscellaneous	497
[No paragraphs in this vol. of the Digest.]	
XXV. MISCELLANEOUS	497

See also BANKRUPTCY, XIV.; CONFLICT OF LAWS, Nos. 4, 5, 6; CONTEMPT AND ATTACHMENT, No. 4; COURTS, No. 1; CRIMINAL LAW, No. 53; CROWN PRACTICE, No. 6; DAMAGES, No. 7; DISCOVERY, No. 3; EXECUTORS, III, (g); HIGHWAYS, No. 9; HUSBAND AND WIFE, No. 10; INTERPLEADER; LIBEL, No. 1; LOCAL GOVERNMENT, No. 8; MORTGAGE, Nos. 10, 11; PATENTS, XII.; RECEIVERS, III.; SOLICITORS; TRUSTS, No. 15.

I. SERVICE OF WRIT OF SUMMONS.

1. *Foreign Corporation—Service of Writ within the Jurisdiction—Business in England—Agent's*

Office — "Head Officer" — R. S. C., Ord. 9, r. 8.]—The defendants were a foreign corporation carrying on business as manufacturers in Germany. They employed a sole agent for the United Kingdom, who rented an office in London and was paid a commission on orders obtained by him for the defendants' goods. The agent also had authority to enter into contracts for the sale of the defendants' goods without submitting the orders to the defendants. Deliveries in fulfilment of orders obtained or contracts made by him were made in some cases out of goods of the defendants lying at wharves in London and in other cases out of a stock of the defendants' goods kept at the agent's office. Goods so delivered were paid for by cheques sent by the purchasers to the agent. The agent also acted for another foreign firm.

HELD—that the defendants were carrying on their business at the agent's office so as to be resident at a place within the jurisdiction, and that the agent could, therefore, be properly served with a writ there, as the "head officer" of the defendants within Ord. 9, r. 8, in an action brought by the plaintiffs against the defendants for breach of an agreement.

SACCHARIN CORPORATION, LD. v. CHEMISCHE [FABRIK VON HEYDEN AKTIENGESSELLSCHAFT, [1911] 2 K. B. 516; 80 L. J. K. B. 1117; 104 L. T. 886; 28 R. P. C. 487—C. A.

2. *No Indorsement of Month and Day of Service — Defect — Irregularity — R. S. C., Ord. 9, r. 15; Ord. 70, r. 2.]—The plaintiff having obtained an order for substituted service of a writ upon the defendant duly effected such service. The indorsement on the writ of the date of service was not, however, made within three days as required by Ord. 9, r. 15, but was made subsequently. No appearance was entered on behalf of the defendant, and the plaintiff obtained judgment in default of appearance for damages to be assessed. Thereafter the damages were assessed in the Sheriff's Court. On an application by the defendant to set aside the judgment and all subsequent proceedings:—*

HELD—that the non-compliance by the plaintiff with the requirements of Ord. 9, r. 15, was not a mere irregularity within Ord. 70, r. 2, but was a defect which prevented the plaintiff proceeding further with the writ, and therefore that the judgment and subsequent proceedings must be set aside.

HAMP-ADAMS v. HALL, [1911] 2 K. B. 942; [80 L. J. K. B. 1341; 105 L. T. 326; 27 T. L. R. 531; 55 Sol. Jo. 647—C. A.

3. *Foreign Railway Company having Office in London for Financial Business only.]—A foreign railway company had an office in London and a board of directors which dealt solely with financial matters, viz., the raising of money for the purposes of the railway by the issue of debentures.*

HELD—that the railway company were carrying on business in this country so as to be resident

I. Service of Writ of Summons—Continued.

here, and therefore that they could be sued in this country.

AKTIESELSKABET DAMPSKIB "HERCULES"
[*v. GRAND TRUNK AND PACIFIC RY. CO.*, 28 T. L. R. 28; 56 Sol. Jo. 51—C. A.]

4. Foreign Corporation—Agent.—In order that a foreign corporation may be liable to be sued in this country by reason of the fact that it has a business residence here, it is necessary that the business carried on by its agents within the jurisdiction should be the business of the corporation. It is not sufficient that the corporation's agents are merely doing work ancillary to the business of the corporation.

ALLISON v. INDEPENDENT PRESS CABLE ASSOCIATION OF AUSTRALASIA, LD., 28 T. L. R. 128—C. A.

5. Service on Company by Registered Post—Consequent Delay in Fact—Marking Judgment Prematurely.—Plaintiffs, who could lawfully have effected service of a writ against a defendant company by posting the same in a prepaid cover properly addressed, for greater certainty registered the same; and in consequence of such registration the letter was not in fact delivered until the day following the "ordinary course of post." The plaintiffs *bonâ fide* believed that the letter had been delivered in the ordinary course of post, and acting on such belief marked judgment in default of appearance immediately after the expiration of the period allowed for entering an appearance.

HELD, on motion by the defendant company to set aside such judgment—that, notwithstanding sect. 26 of the Interpretation Act, 1889, where the writ had not, in fact, been delivered in the ordinary course of post, the defendants were entitled to have the judgment set aside on the ground that it had been marked prematurely.

RYLANDS GLASS ENGINEERING CO., LD. v. PHENIX CO., LD., [1911] 2 I. R. 532—Div. Ct., Ireland.

II. SERVICE OUT OF JURISDICTION.**(a) Breach of Contract performable within Jurisdiction.**

[No paragraphs in this vol. of the Digest.]

(b) Injunction.

[No paragraphs in this vol. of the Digest.]

(c) Miscellaneous.

6. Arbitration—Notice of Motion to Set Aside Award—Service—Foreign Company out of Jurisdiction—R. S. C., Ord. 11, rr. 1, 8, 8A.—Ord. 11, r. 8A, does not confer jurisdiction to give leave for a summons, order, or notice to be served out of the jurisdiction except under the circumstances in which there is jurisdiction to give leave for a writ of summons or notice of a writ of summons to be served out of the jurisdiction under Ord. 11, r. 1.

Y.D.

By a contract of sale executed in France and made between a Swedish company and a French company, the Swedish company, the sellers, elected a domicile in France. Under the terms of that contract all disputes were to be referred to arbitration, and, upon disputes having arisen, the French company appointed a Frenchman as their arbitrator, the Swedish company an Englishman, and the two arbitrators appointed an Englishman as umpire, who made his award in England. Neither of the companies carried on business in England.

HELD—that leave could not be given under Ord. 11, r. 8A, to serve the French company in France with a notice of motion to set aside the award.

IN RE AKTIEBOLAGET ROBERTSFORS AND LA SOCIÉTÉ ANONYME DES PAPETERIES DE L'AA, [1910] 2 K. B. 727; 80 L. J. K. B. 13; 103 L. T. 503—Div. Ct.

7. Appearance under Protest—Limit of Time for Setting Aside Writ—Extension of Time—Practice Masters' Rules, r. 11—R. S. C. Ord. 12, r. 30; Ord. 64, r. 7.—The fact that an application by a defendant to set aside a writ served out of the jurisdiction to which he has entered an appearance under protest is not made within the stipulated time stamped on the appearance in accordance with the Practice Masters' Rules, r. 11, is only a *prima facie* abandonment of the conditional character of the appearance. The Practice Masters' Rules are not statutory rules, but are rules of convenience which do not limit the power of the Court to grant an extension of time or to set aside the writ, notwithstanding the expiration of the stipulated time, if, in the opinion of the Court, the delay does not show either an intention to abandon the protest or an improper attempt to impede the administration of justice.

KEYMER v. REDDY, [1911] W. N. 247; 132 L. T. [Jo. 131; 46 L. J. N. C. 770—C. A.]

(d) Necessary or Proper Party.

8. Concurrent Writ—Defendant out of Jurisdiction—Unconditional Appearance—Abuse of Rule—Colourable Joinder of Parties—Discontinuance of Action against only Defendant within Jurisdiction—Judicature (Ireland) Act, 1877 (40 & 41 Vict. c. 57), s. 27 (5)—R. S. C. (I.), Ord. 11, r. 1 (h).—To justify the exercise of the power to allow service of a writ out of the jurisdiction under R. S. C. (I.), Ord. 11, r. 1 (h), the person served within the jurisdiction must be one against whom relief is *bonâ fide* sought by the plaintiff and not a person, colourably joined or the purpose of effecting service out of the jurisdiction under the Order, against whom the plaintiff has no real cause of action, and against whom the action is discontinued before trial. In a case of colourable joinder, even though an unconditional appearance had been entered by the defendant out of the jurisdiction, the Court, upon the discontinuance of the action against the sole defendant within the jurisdiction, stayed all

II. Service out of Jurisdiction—Continued.

further proceedings in the action on the ground that it was an abuse of the rule.

SHARPLES v. EASON & SON, LD., [1911] 2 I. R. 436; 45 I. L. T. 204—C. A., Ireland.

See ROSS v. EASON, infra.

9. Abuse of Rule—Libel—Newsagent—R. S. C. (I.) Ord. 11, r. 1 (h).—A letter, alleged to be a libel on the plaintiff, was published by a London newspaper, copies of which were sold in Dublin by E. & Son, a firm of Dublin newsagents, between whom and the publishers of the paper no contract of agency existed, and who were, as they alleged, ignorant of the alleged libel. Proceedings for the alleged libel were threatened by the plaintiff against the publishers and printers of the paper in London, and on their refusal to nominate a solicitor in Ireland to accept service of a writ of summons on their behalf, the plaintiff, without any previous communication, issued a writ of summons claiming damages for the alleged libel against E. & Son, and then applied for and obtained an order under R. S. C. (I.), Ord. 11, r. 1 (h), granting leave to issue and serve a concurrent writ for service out of the jurisdiction on the publishers and printers of the paper in London, alleging that the latter were necessary and proper parties to the action brought against E. & Son, within the jurisdiction.

HELD—that the order for service out of the jurisdiction should be set aside, on the ground that the action against E. & Son was only instituted for the purpose of bringing the English defendants within the jurisdiction of the Irish Courts.

ROSS v. EASON & SON, LD., [1911] 2 I. R. 459—[C. A., Ireland.

III. SUMMARY JUDGMENT ON SPECIALLY INDORSED WRIT.

See also ESTOPPEL, No. 3.

10. Order for Judgment under Ord. 14—Signing Judgment more than a Year Later—Notice of Intention to Proceed not Necessary—R. S. C., Ord. 64, r. 13.—Where a plaintiff, after obtaining an order for leave to sign judgment under Ord. 14, takes no further step for more than a year he need not give a month's notice to the defendant, under Ord. 64, r. 13, before signing judgment, as the latter rule does not apply to such a case.

Staffordshire Bank v. Weaver ([1884] W. N. 78) overruled.

DEIGHTON v. COCKLE, [1911] W. N. 246; 131 [L. T. Jo. 108; 45 L. J. N. C. 788—C. A.

11. Weekly Tenancy—Determined by Notice to Quit—R. S. C., Ord. 3, r. 6; Ord. 14, r. 1.—Where a weekly tenancy is determined by notice to quit, the landlord is entitled to proceed for recovery of the premises by specially indorsed writ under Ord. 3, r. 6, and to recover judgment under Ord. 14, r. 1.

M'GILLICUDDY v. CASSIDY, [1911] 2 I. R. 632; [44 I. L. T. 210—C. A., Ireland.

IV. PARTIES.

See also No. 41, infra; EXECUTORS, Nos. 25, 26; LANDLORD AND TENANT, No. 10; MORTGAGE, No. 12.

(a) Attorney-General.

12. Relief against the Crown—Declaratory Judgment—Attorney-General Defendant—Action or Petition of Right—R. S. C., Ord. 25, r. 5—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), Form IV.—The Court has jurisdiction to entertain an action against the Attorney-General, as representing the Crown, although the immediate and sole object of the action is to affect the rights of the Crown in favour of the plaintiff.

Hodge v. Attorney-General ((1839) 3 Y. & C. Ex. 342) examined and approved.

A declaratory judgment can, under Ord. 25, r. 5, be made against the Attorney-General, as defendant representing the Crown, and a plaintiff is not bound in such a case to proceed by petition of right.

DYSON v. ATTORNEY-GENERAL, [1911] 1 K. B. 410; 80 L. J. K. B. 531; 103 L. T. 707; 27 T. L. R. 143; 55 Sol. Jo. 168—C. A.

13. Relief against Crown—Declaratory Judgment—Attorney-General Defendant—R. S. C., Ords. 25, r. 5, 68, r. 1.—The Court has jurisdiction under Ord. 25, r. 5, to make a binding declaration of right against the Attorney-General as representing the Crown, but the jurisdiction is discretionary and ought to be exercised with great care and with a due regard to all the circumstances of the case.

Dyson v. Attorney-General (*supra*) followed.

By Ord. 68, r. 1, "Subject to the provisions of this Order nothing in these rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters: . . . (c) Proceedings, on the Revenue side of the King's Bench Division. . ."

HELD—that the Order referred only to the procedure and practice in the several causes or matters therein mentioned, and that an action, brought in the Chancery Division for a declaration that a certain form issued by the Commissioners of Inland Revenue under the Finance (1909-10) Act, 1910, was illegal, unauthorised, and *ultra vires*, was not one of those to which the Order referred, but was governed by the ordinary rules of procedure and practice of which Ord. 25, r. 5, was one.

BURGHES v. ATTORNEY-GENERAL, [1911] 2 Ch. 139; 80 L. J. Ch. 506; 105 L. T. 193; 27 T. L. R. 433; 55 Sol. Jo. 520—Warrington, J.

See S. C. on Appeal, CROWN PRACTICE, No. 2.

(b) Compromise.

See also ESTOPPEL, No. 1.

14. Plaintiff of Unsound Mind not so Found—Small Fund—Payment to Next Friend—R. S. C.,

IV. Parties—Continued.

Ord. 16, r. 17; *Ord.* 22, r. 15.]—An action was brought by M. R., a person of unsound mind not so found, suing by W. R., her brother and next friend, against E. R., as sole executrix and universal legatee of T. R., to recover a legacy of £500 bequeathed to her by one D. deceased, whose executor, T. R., had, it was alleged, retained the legacy on behalf of and to the use of the plaintiff. For many years prior to his death T. R. had supported the plaintiff, and the defendant contended that the amount due to T. R.'s estate for the maintenance of the plaintiff greatly exceeded the sum of £500. The parties had agreed to stay all proceedings in the action on payment of £160 by the defendant to W. R. as the next friend of the plaintiff, and now applied for sanction of the Court. No proceedings in lunacy were pending.

HELD—that the compromise should be sanctioned on W. R.'s undertaking to apply the £160 for the future maintenance of the plaintiff at the rate of 8s. a week.

IN RE RYAN, RYAN *v.* RYAN, [1911] W. N. 56; [130 L. T. Jo. 460—Neville, J.]

(c) Joinder of Defendants.

15. Contract for Carriage of Frozen Meat—Joinder of Owners of Unseaworthy Ship Employed under Contract—R. S. C., *Ord.* 16, r. 4.]—The power to join several defendants under *Ord.* 16, r. 4, extends to cases where the subject-matter of complaint is substantially the same against all the defendants, although the causes of action against them may be technically different and the respective grounds of liability are to some extent different.

The plaintiffs in their points of claim alleged that they contracted with H. Brothers for the carriage of frozen meat by certain named ships or by other suitable ships upon terms set out in the contract; that it was agreed that H. Brothers should provide the *D.*, a ship belonging to the F. company, to do service under the contract; and that owing to the *D.*'s unseaworthiness a consignment of meat was damaged. They claimed damages, severally or in the alternative, from H. Brothers under their contract, and from the F. company under the bills of lading signed by the master of the *D.*

HELD—that under *Ord.* 16, r. 4, the plaintiffs could join the F. company as defendants.

Frankenburg v. Great Horseless Carriage Co. ([1900] 1 Q. B. 504) followed.

Smurthwaite v. Hannay ([1894] A. C. 494) and *Sadler v. Great Western Ry. Co.* ([1896] A. C. 450) discussed.

Decision of Hamilton, J., reversed.

COMPANIA SANKINENA DE CARNES CONGELADAS *v.* HOULDER BROTHERS & Co., LD., [1910] 2 K. B. 354; 79 L. J. K. B. 1094; 103 L. T. 333; 11 Asp. M. C. 525—C. A.

(d) Joinder of Plaintiffs.

See No. 16, *infra*.

(e) Married Woman.

[No paragraphs in this vol. of the Digest.]

(f) Pauper.

[No paragraphs in this vol. of the Digest.]

(g) Representation.

See also EXECUTORS, No. 4.

16. "Persons Having the Same Interest in One Cause or Matter"—Shippers of Goods on Vessel Sunk for Carrying Contraband—R. S. C., *Ord.* 16, r. 9.]—The plaintiffs were shippers of goods on board a vessel belonging to the defendants on a voyage from the United States to Japan during the Russo-Japanese War. On her voyage the vessel was sunk by a Russian cruiser on the ground that she was carrying contraband of war. The plaintiffs instituted an action against the defendants, the writs being issued "on behalf of themselves and others owners of cargo lately laden on board" the vessel, and the claim as indorsed on the writs was "For damages for breach of contract and duty in and about the carriage of goods by sea." The defendants took out a summons asking that the writs, or so much of the writs as related to parties other than the plaintiffs, be set aside on the ground that the provisions of *Ord.* 16, r. 9, were not applicable.

HELD (Buckley, L.J., dissenting)—that the plaintiffs, not being "persons having the same interest in one cause or matter," were not entitled to sue in a representative capacity, and that the writs ought therefore to be set aside.

Per Moulton, L.J.—A representative action does not lie to recover damages only.

Decision of Bucknill, J., reversed.

MARKT & Co., LD. *v.* KNIGHT STEAMSHIP CO., [LD., SALE AND FRAZER, LD. *v.* KNIGHT STEAMSHIP CO., LD., [1910] 2 K. B. 1021; 79 L. J. K. B. 939; 103 L. T. 369; 11 Asp. M. C. 460—C. A.]

(h) Substituting Plaintiff.

[No paragraphs in this vol. of the Digest.]

(i) Third Party Procedure.

17. Third and Fourth Parties—Costs—Jurisdiction—R. S. C., *Ord.* 16, rr. 11, 48, 54.]—In an action against defendants who claim indemnity against a third party who obtains an order in the presence of the plaintiffs against a fourth party, directing delivery of pleadings and that the fourth party be at liberty to appear at the trial and be bound by the result, the Court has jurisdiction under the third party procedure in Part VI. of *Ord.* 16 to decide all questions of costs as between the parties to the action and the third and fourth parties, the rules applying not only to third parties but further parties.

KLAWANSKI *v.* PREMIER PETROLEUM CO., LD., [PRUDENTIAL TRUST CORPORATION, LD. (THIRD PARTIES), MAISEL (FOURTH PARTY), [1911] W. N. 94; 104 L. T. 567; 55 Sol. Jo. 408—Eve, J.]

V. JOINDER OF CAUSES OF ACTION.

[No paragraphs in this vol. of the Digest.]

VI. PAYMENT INTO COURT.

See also BANKRUPTCY, No. 3; ECCLESIASTICAL LAW, No. 3.

(a) Acceptance.

[No paragraphs in this vol. of the Digest.]

(b) Admitting Liability.

[No paragraphs in this vol. of the Digest.]

(c) Denying Liability.

[No paragraphs in this vol. of the Digest.]

(d) Generally.

[No paragraphs in this vol. of the Digest.]

(e) Libel or Slander.

18. Costs—Payment into Court—Verdict for Smaller Sum.—The plaintiff sued the defendant for slander in respect of a statement that the plaintiff had at a Parliamentary election voted twice in one division. The defendant admitted publication, but paid £10 10s. into Court, and pleaded in mitigation of damages certain letters of apology which he had written. At the trial the jury found a verdict for the plaintiff with one farthing damages, and Darling, J., held that the plaintiff was entitled to the costs of the action.

HELD—that there was no reason shown for interfering with the judge's discretion in making the order that he did.

Decision of Darling, J. (27 T. L. R. 67) affirmed.

KINNELL v. WALKER, 27 T. L. R. 257—C. A.

(f) Trustees.

[No paragraphs in this vol. of the Digest.]

VII. PAYMENT OUT OF FUND IN COURT.

See also No. 28, *infra*.

19. Payment Out on Order of Court made on Incorrect Evidence—"Default" of Paymaster-General—Liability to Replace Fund—Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 5.—Where the Paymaster-General, in paying money out of Court, simply obeys the order of Court, he is not guilty of default within the meaning of sect. 5 of the Court of Chancery (Funds) Act, 1872, although it may subsequently appear that the order of Court upon which he acted was made on incorrect evidence. In such circumstances, therefore, a person who, but for such incorrect evidence, would have been entitled to receive a part of the fund, cannot claim to have the amount thereof replaced out of the Consolidated Fund.

IN RE WILLIAMS'S SETTLED ESTATE, [1910]
[2 Ch. 481; 80 L. J. Ch. 8; 103 L. T. 390;
26 T. L. R. 688; 54 Sol. Jo. 736—Eady, J.]

20. Parliamentary Deposit—Payment Out—Leave for Claimant to Attend to Examine other Claims—Discovery.—A tramway company, whose undertaking had been sold, had no assets and for all practical purposes had ceased to exist, but had not been legally dissolved. On November 19th, 1909, the usual order was made

for inquiries as to persons entitled to compensation out of the parliamentary deposit, and it was declared that, subject to such compensation, the fund in Court ought to be applied for the benefit of the company's creditors, and an inquiry was directed whether there were any, and what, creditors and what was due to them. This order was made on the application of the executrix of a contractor, who claimed under a judgment against the company in favour of the contractor, dated January 15th, 1897, for £21,937 and subsequent interest, making her claim up to £31,624. The inquiry was held, the only other creditors attending being the solicitors of the company, who claimed £1,100 for costs, and the British Mutual Banking Company, who claimed £1,650. The bank objected to the executrix's claim that the debt was statute-barred, and also that the judgment was taken by consent of the company, and demanded inspection of the company's documents. This was refused. The bank took out this summons for discovery and for leave to attend the inquiry for the future in the place and stead of the company.

HELD—that the applicants were entitled to an order for discovery, and to have leave to attend the proceedings relating to the claims of the contractor's executrix and the solicitors, but not to be appointed to attend in place of the company.

IN RE PECKHAM AND EAST DULWICH TRAMWAYS CO., [1911] W. N. 15; 130 L. T. Jo. 338; 45 L. J. N. C. 56—Eady J.

VIII. ACTION FOR DECLARATION.

See No. 12, *supra*; CONTRACT, No. 9;
LANDLORD AND TENANT, No. 16.

IX. DISCONTINUANCE.

See No. 8, *supra*.

X. TRIAL.

(a) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

(b) Notice of Trial.

[No paragraphs in this vol. of the Digest.]

(c) Place of Trial.

[No paragraphs in this vol. of the Digest.]

(d) Right to Jury.

[No paragraphs in this vol. of the Digest.]

XI. MOTION FOR NEW TRIAL.

(a) Costs.

[No paragraphs in this vol. of the Digest.]

(b) Grounds for Ordering New Trial.

21. Notice of Motion—Misdirection and Non-direction—Insufficient Statement of Grounds—Ord. 39, r. 3.—A notice of motion for a new trial, grounded upon misdirection and non-direction of the judge at the trial of the action, should state specifically the particulars as to misdirection and non-direction upon which the moving party intends to rely.

XI. Motion for New Trial—Continued.

Pfeiffer v. Midland Railway Co. (1886) 18 Q. B. D. 243 followed.

HUGHES v. DUBLIN UNITED TRAMWAYS CO. [Ld. [1911] 2 I. R. 114—Div. Ct., Ireland.

(c) Time for Serving Notice.

[No paragraphs in this vol. of the Digest.]

XII. JUDGMENT.

See also No. 10, *supra*; SET-OFF AND COUNTER-CLAIM.

22. Damages—Joint Tort-feasors—Libel—Apportionment by Jury.—In an action for libel against a newspaper and the writer of the matter complained of, the jury gave a verdict for the plaintiff for £500 and apportioned the damages as being £495 against the newspaper and £5 against the writer.

HELD—that, as damages could not be apportioned against joint tort-feasors, judgment must be entered for the full amount against both defendants.

DAMIENS v. MODERN SOCIETY, LD., 27 T. L. R. [164—Grantham, J.

XIII. EXECUTION.**(a) Discovery in Aid.****(b) Scottish Judgment.**

[No paragraphs in this vol. of the Digest.]

(c) Sequestration.

23. Corporation—Judgment by Consent—Undertaking—Breach—R. S. C., Ord. 42, r. 31.—At the trial of an action brought to restrain the defendants' company from carrying on blasting operations so as to cause nuisance and danger to the plaintiff, judgment was entered by consent, the defendants agreeing not to carry on blasting operations so as to discharge fragments of rock on the plaintiff's land. Thereafter the plaintiff alleged that the defendants had on several occasions broken their undertaking, and therefore applied by motion for a writ of sequestration under Ord. 42, r. 31.

HELD—that there had been a breach of the undertaking, although unintentional; that if there were any recurrence of the offence a writ of sequestration would issue; and that the company must pay the costs of the motion as between solicitor and client.

DAVIS v. KHAYADER GRANITE QUARRIES, LD., [131 L. T. Jo. 79—Neville, J.

(d) Stay.

[No paragraphs in this vol. of the Digest.]

(e) Writ of Possession.

[No paragraphs in this vol. of the Digest.]

(f) In General.

[No paragraphs in this vol. of the Digest.]

XIV. ATTACHMENT OF DEBTS.

[No paragraphs in this vol. of the Digest.]

XV. CHARGING ORDERS.

See SOLICITORS, V. (c).

XVI. EQUITABLE EXECUTION.

See BANKRUPTCY, No. 11; RECEIVERS, II.

XVII. ACTIONS BY AND AGAINST FIRMS.

[No paragraphs in this vol. of the Digest.]

XVIII.—TRANSFER AND CONSOLIDATION OF ACTIONS.

See COUNTY COURTS, No. 7.

XIX. MOTIONS.

24. Motion to Commit—Necessity for Service of Copy of Affidavit with Notice of Motion—R. S. C., Ord. 52, r. 4.—Order 52, r. 4, does not apply to a motion to commit. Under the rule, therefore, a copy of the affidavit on which a motion to commit is founded need not be served with the notice of motion.

Decision of Warrington, J. ([1911] 2 Ch. 368; 27 T. L. R. 556) reversed.

TAYLOR, PLINSTON BROTHERS & CO., LD. v. [PLINSTON], [1911] 2 Ch. 605; 105 L. T. 615; 28 T. L. R. 11; 56 Sol. Jo. 33—C. A.

25. Originating Motion Placed in Non-witness List—Hearing Fee—Order as to Supreme Court Fees, 1884, Sched., Item 52.—Where, to suit the convenience of the Court, an originating motion is directed to be placed in the non-witness list, no hearing fee ought to be demanded.

IN RE ANGUS WATSON & CO.'S APPLICATION, [1911] W. N. 56; 55 Sol. Jo. 292; 28 R. P. C. 167—Parker, J.

XX. ORIGINATING SUMMONS.

See also SOLICITORS, No. 10.

26. Void Trusts—Cestui que Trust under Resulting Trust—Contributor to Trade Union Funds Claiming Account and Inquiry—R. S. C., Ord. 54A, r. 1; Ord. 55, r. 3.—Proceedings by way of originating summons are not available, either under Ord. 55, r. 3, or under Ord. 54A, r. 1, to persons claiming as the *cestuis que trust* under a resulting trust arising on failure of the trusts of an instrument on account of illegality. For their claim is not under the instrument which declared the trusts which have failed, nor are they seeking to have that instrument construed. Therefore, even assuming that the rules of a trade union constitute such an instrument as is referred to in the above rules, yet the subscribers to a fund devoted by the rules of a trade union to an illegal object cannot obtain a declaration of their right to be repaid their subscriptions upon an originating summons, but must resort to an action commenced by writ to obtain the relief (if any) to which they are entitled.

IN RE AMALGAMATED SOCIETY OF RAILWAY SERVANTS (PARLIAMENTARY FUND TRUSTS), *ADDISON v. PILCHER*, [1910] 2 Ch. 547; 80 L. J. Ch. 19; 103 L. T. 627; 27 T. L. R. 12; 54 Sol. Jo. 871—Eady, J.

XXI. CHAMBERS IN CHANCERY DIVISION.

See also No. 26, *supra* : EXECUTORS, Nos. 24, 26.

27. Sale of Real Estate—Conditional Contract—Order of Master approving Contract—Order not Passed and Entered—Finality of Order—Adjournment to Judge.—An order made by a master in chambers is not complete and binding on the parties until it is passed and entered. Although the settled practice in chambers is that an adjournment of a summons to be heard by the judge will not be granted unless an application is made to the Master, at the time when the summons is heard by him, either for an adjournment or for time to consider whether an adjournment shall be asked for, yet the Master or the judge has jurisdiction at any time before the Master's order becomes finally binding on the parties by being passed and entered to adjourn the summons to be heard by the judge.

Dictum of Malins, V.-C., in *In re Bartlett* (1880) 16 Ch. D. 561, 568 distinguished.

IN RE THOMAS, BARTLEY *v.* THOMAS, [1911] 2 Ch. 389; 80 L. J. Ch. 617; 105 L. T. 59; 55 Sol. Jo. 567—Warrington, J.

See S. C. under EXECUTORS, VI.

28. Payment Out of Court—Fund Exceeding £500—Title Depending only on Proof of Identity and Age of Applicant—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 42—R. S. C. (Ireland), 1905, Ord. 55, r. 3 (1), (2); Ord. 77, r. 9 (d)—R. S. C., Ord. 55, r. 2 (1), (2); Ord. 54B, r. 5 (d).—The practice under R. S. C. (Ireland), Ord. 55, r. 3 [similar to R. S. C., Ord. 55, r. 2, but £500 being substituted for £1,000], is that an application for payment out of a fund exceeding £500 lodged in Court under the Trustee Act, 1893, should be made on motion, although the title of the applicant depends only on proof of identity and age.

IN RE SITWELL, [1911] 2 I. R. 434—Mercedith, [M.R., Ireland.

XXII. APPEALS.

See also ADMIRALTY, No. 1.

(a) Appeals to Court of Appeal.

See MASTER AND SERVANT, Nos. 92, 93, 94.

(b) Appeals to House of Lords.

See also No. 33, *infra*.

29. Decision upon Hypothetical State of Facts—Waiver of Clause in Contract.—The House of Lords will not give a decision upon a hypothetical state of facts, which does not represent the real contract between the parties.

Therefore where shipowners sued the charterers for demurrage under a charter-party which contained a cesser clause which would have been a complete answer to the action, and the defendants, by agreement between the solicitors of the parties, undertook not to rely upon this clause, the House of Lords declined to make any other

order than that the action be dismissed, no costs being allowed to either party.

GLASGOW NAVIGATION CO. *v.* IRON ORE CO., [1910] A. C. 293; 79 L. J. P. C. 83; 102 L. T. 435; 11 Asp. M. C. 387; [1910] S. C. (H. L.) 63; 47 Sc. L. R. 507—H. L. (Sc.)

(c) Arbitration Appeals.

[No paragraphs in this vol. of the Digest.]

(d) Divisional Court.

See INTERPLEADER, No. 1; MASTER AND SERVANT, Nos. 93, 94.

(e) Final and Interlocutory Orders.

[No paragraphs in this vol. of the Digest.]

(f) Generally.

30. "Criminal Cause or Matter"—Writ of Attachment—Refusal by witness to Produce Documents.—A witness refused to produce certain documents at an examination under the Foreign Tribunals Evidence Act, 1856, whereupon an application was made in chambers for leave to issue a writ of attachment against him. The judge refused to make the order.

Held, that the judge's order was not made in a criminal matter, inasmuch as what was sought to be done by the writ of attachment was to compel the witness to produce the documents, and not merely to punish him, and therefore that an appeal lay from the judge's decision.

ECCLES & CO. *v.* LOUISVILLE AND NASHVILLE [RAILROAD CO., 28 T. L. R. 36; 56 Sol. Jo. 74—Div. Ct.

See S. C. on appeal, EVIDENCE, No. 3.

(g) Official Referee.

[No paragraphs in this vol. of the Digest.]

(h) Security for Costs.

31. Order of Justices—Husband's Appeal—Order for Security—Stay—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).—A husband having appealed from an order obtained by his wife under the Summary Jurisdiction (Married Women) Act, 1895, application for security for the wife's costs was made to a judge in chambers supported by an affidavit stating that he had no property to answer any order for costs and also stating that the wife had no means of her own. An order was made that the husband (appellant) should pay into Court or give security for the costs of his wife (respondent on the appeal), and the hearing of the appeal was stayed meanwhile.

SIRRELL *v.* SIRRELL, [1911] P. 38; 80 L. J. P. [8; 104 L. T. 79; 27 T. L. R. 155—Deane, J.

(i) Time for Appeal.

See also BANKRUPTCY, No. 17; PATENTS, No. 7.

32. Extension—Winding-up of Company—Misfeasance Summons Dismissed—R. S. C., Ord. 58, rr. 9, 15; Ord. 64, r. 7.—A misfeasance summons taken out against directors by the liquidator

XXII. Appeals—*Continued.*

of a company was dismissed on November 29th, 1910. The liquidator received the opinion of counsel as to the chance of the success of an appeal on December 16th, and on December 21st sent a circular to the shareholders and creditors acquainting them with the opinion and asking for funds to prosecute the appeal. In response to this circular an insufficient sum was promised, and on January 5th, 1911, he sent a second circular and applied to the Court to extend the time for appealing to January 31st, the time for appealing having expired on December 13th, 1910.

HELD—that the liquidator had taken a proper course in consulting the creditors and shareholders, and under the circumstances the time for appealing ought to be extended.

IN RE BRAZILIAN RUBBER PLANTATIONS AND [ESTATES, LD., [1911] W. N. 13; 103 L. T. 882—C. A.

XXIII. COSTS.

See also No. 17, *supra*; BANKRUPTCY, Nos. 3, 19; COMPANIES, No. 55; COMPULSORY PURCHASE, No. 4; COUNTY COURTS, No. 1; ECCLESIASTICAL LAW, No. 3; EXECUTORS, Nos. 22, 27, 28; HUSBAND AND WIFE, XI. (2); METROPOLIS, No. 23; MORTGAGE, Nos. 13, 15; SALE OF LAND, No. 10; SET-OFF AND COUNTER-CLAIM; SETTLEMENTS, No. 20; SOLICITORS, V. and No. 16; TRADE MARKS, No. 8.

(a) Appeal.

33. *Appeal from Court of Appeal—Solicitor's Undertaking to Repay Costs if Appeal Successful.*—The Court of Appeal will not, except in very special circumstances, order that the costs payable to the successful litigant should only be paid on his solicitor's undertaking to repay same in the event of an appeal to the House of Lords being successful.

GRIFFITHS v. BENN, 27 T. L. R. 346—C. A.

(b) Apportionment.

[No paragraphs in this vol. of the Digest.]

(c) Discretion of Judge.

See also No. 18, *supra*.

34. *Party Receiving One Farthing Damages—Slander.*—In an action for slander the jury found the main issue in favour of the plaintiff, but returned a verdict for one farthing damages only.

HELD—that the plaintiff was entitled to the costs of the action.

MACALISTER v. STEEDMAN, 27 T. L. R. 217—[Bucknill, J.]

AFFIRMED ON APPEAL—See [1911] W. N. 119—C. A.

(d) Documents.

35. *Shorthand Notes Joint Note—Transcript—Costs in the Action.*—At the trial of this

action it was agreed by both parties that a joint shorthand note of the evidence should be taken and used in the event of an appeal. There was no arrangement as to making the costs of such note costs in the action. There was no technical difficulty in the way of the judge taking a note. The successful plaintiff now sought to include the costs of the shorthand note in his bill of costs.

HELD—that the motion must be refused on the ground that there was no technical difficulty in the way of the judge taking a sufficient note, and that there had been no agreement between the parties that the costs should be costs in the action.

OSMOND v. Mutual Cycle and Manufacturing Supply Co. ([1899] 2 Q. B. 488) distinguished.

JONES v. LLANRWST URBAN DISTRICT COUNCIL, [1911] 1 Ch. 393, 411; 80 L. J. Ch. 338; 104 L. T. 53; 75 J. P. 99—Parker, J.

36. *Shorthand Notes—Note Taken by Agreement of Parties—Notice to Judge at Trial—Notes Used on Appeal.*—Where the parties agree at the trial that a shorthand note shall be taken, and thereupon intimate that agreement to the presiding judge, so that he is thereby relieved from taking a note, as the shorthand note, by consent, is to be the record of what took place for the guidance of the Court of Appeal, the cost of such note to the successful party will be allowed on taxation.

HEBERT v. ROYAL SOCIETY OF MEDICINE, [56 Sol. Jo. 107.—C. A.]

(e) Independent Proceedings.

[No paragraphs in this vol. of the Digest.]

(f) Miscellaneous.

37. *Costs Charged upon Land—Interest not Mentioned in Charging Order—Interest Allowed.*—Where by order of a Court costs are declared to be charged upon land, when taxed and ascertained, such charge will carry interest from the date of the certificate of taxation, although interest was not mentioned at the time the order was made in the same manner as any other equitable charge.

IN RE MACDERMOTT, 45 I. L. T. 284—C. A., [Ireland.]

(g) Security for Costs.

See also No. 31, *supra*; COUNTY COURTS, No. 4.

38. *Cross-action—Plaintiffs in Cross-action Resident Out of Jurisdiction—Discretion.*—There is no hard and fast rule of practice which prevents the Court from making an order for security for costs against a person resident out of the jurisdiction who, upon being sued in this country, sets up a cross-claim, either by counter-claim or by cross-action. It is for the Court to consider, in the exercise of its discretion, whether, having regard to the circumstances of the particular case, the cross-claim must be treated as made, substantially, by way of defence to the action against

XXIII. Costs—Continued.

the claimant, or whether it must be regarded as being in the nature of an independent claim made in respect of matters foreign to that action, and therefore one with regard to which security for costs ought to be ordered to be given.

An agreement was made between insurance company A. and insurance company B., which was a foreign company carrying on business out of the jurisdiction, for the reinsurance by the latter company of a certain proportion of fire risks undertaken by the former company in various parts of the world. The agreement provided for quarterly settlements of accounts between the two companies. Such settlements accordingly took place every quarter during a period of four years ending in 1908. Company A. brought an action against company B., alleging that they had been unable to obtain settlements of accounts from company B. in respect of business done in subsequent quarters, and claiming an account in respect of such quarters, and payment of the balance, if any, found to be due to them. Company B. thereupon brought a cross-action against company A., asking for inspection of all original documents and vouchers connected with all transactions in which the plaintiffs were interested under the agreement, that all the previously settled accounts between the two companies should be re-opened on the ground of errors having occurred therein, and for an account and payment of any moneys found to be due to them after the said accounts had been re-opened and taken.

HELD—that an order should be made for security for the costs of the cross-action against company B.

NEW FENIX COMPAGNIE ANONYME D'ASSUR-
[ANCES DE MADRID *v.* GENERAL ACCIDENT,
FIRE, AND LIFE ASSURANCE CORPORATION,
LD., [1911] 2 K. B. 619; 80 L. J. K. B.
1301; 105 L. T. 469—C. A.

39. *Witnesses' Expenses—Principal Witness—Delay in Admission of Facts rendering Witness Unnecessary—Counsel's Advice on Evidence.*—In an action under Lord Campbell's Act, at Sligo, before a common jury, the principal medical witness on behalf of the plaintiff was brought from London, owing to the delay on the part of the defendant to admit certain facts, the unqualified admission of which rendered the witness's presence at the trial unnecessary. The taxing master disallowed the whole of the costs in respect of such witness.

HELD—that the taxing master was wrong in so doing, and that the exercise of his discretion did not extend so far as to enable him to disallow the costs of the main witness upon whose evidence the whole action depended.

HELD ALSO—that regard should be had to counsel's directions for proofs, but that they were not conclusive.

O'BRIEN *v.* O'BRIEN, 45 I. L. T. 203—Dodd, J., [Ireland.

(h) Taxation Generally.

See also SOLICITORS, No. 10.

40. *Counsel's Fees—Two Counsel—Action under Ord. 14—Entry in Short Cause List—Discretion of Taxing Master.*—The mere fact that an action has been ordered to be put in the Short Cause List has no effect on the taxation of costs, and therefore is not a ground for saying that the costs of two counsel should not be allowed. The allowance of fees of two counsel is not purely a matter of *quantum*; but it is a matter which the taxing master is better qualified than a judge to decide.

Although the Court has jurisdiction to interfere with the discretion of the taxing master the Court will very rarely do so, unless the taxing master has gone wrong on a matter of principle.

GINN *v.* ROBEY, [1911] W. N. 28; 130 L. T. Jo.
[337; 46 L. J. N. C. 73—C. A.

41. *Witnesses' Expenses—Particulars of Items for Instructions.*—It is irregular for the taxing master to allow sums in gross for witness's expenses.

Particulars should be given by the solicitor of the fees for instructions, and he should state the character, nature, and duration of the work covered by items for instructions.

STEWART *v.* KILKENNY, 45 I. L. T. 154—Div.
[Ct., Ireland.

(i) Trustees and Executors.

[No paragraphs in this vol. of the Digest.]

(k) Two Defendants.

[No paragraphs in this vol. of the Digest.]

XXIV. STAY OF PROCEEDINGS.

See also No. 8, *supra*; ARBITRATION,
Nos. 4, 5, 6; SHIPPING, No. 21.

(a) Actions in Different Courts.

See also COURTS, III. (b).

42. *Transactions Between Borrower and Money-lender—Action by Borrower in Chancery Division Claiming Account and Declaration that Money-lending Transactions Harsh and Unconscionable—Action by Money-lender in King's Bench Division on Promissory Note.*—The defendant, who had a number of transactions with the plaintiff, a registered money-lender, offered the plaintiff just before the last sum he had borrowed had become due the balance of the principal and a sum for interest which the money-lender declined. The borrower thereupon issued a writ in the Chancery Division claiming an account of all transactions between him and the money-lender, and a declaration that some of them were harsh and unconscionable, and for relief under the Money-lenders Act. The money-lender shortly thereafter issued a writ in the King's Bench Division for the full amount said to be owing by the borrower. The borrower thereupon took out a summons asking for a stay of the proceedings in the King's

XXIV. Stay of Proceedings—Continued.

Bench Division on the ground that they were an abuse of the process of the Court in view of the proceedings pending in the Chancery Division.

HELD (Kennedy, L.J., dissenting)—that, in the circumstance of the case, the proceedings in the King's Bench Division should be stayed.

TUMIN v. LEVI, 28 T. L. R. 125—C. A.

(b) Frivolous and Vexatious Actions.

See COURTS, No. 3; PLEADING, No. 2.

(c) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

XXV. MISCELLANEOUS.

43. Annulment of Former Rules—R. S. C., Ord. 72, r. 2; Appendix O.—Ord. 72, r. 2, has not the effect of preserving a practice which existed under any of the rules in Appendix O of the Rules of the Supreme Court, 1883, which are annulled by the introductory rule.

THE "CRAIGHALL," [1910] P. 207; 79 L. J. P. [73; 103 L. T. 236; 11 Asp. M. C. 419—C. A.]

44. Action by Official Solicitor—Instructions by Court—Functions of Official Solicitor.—Where the Court refers a matter to the official solicitor, the instructions, if not inserted in the order, ought to be embodied in some document, or at least be reduced into writing.

The functions of the official solicitor with regard to instituting legal proceedings considered.

IN RE CATON, VINCENT v. VATCHER, 55 Sol. Jo. [313—Eve, J.]

45. Commercial List—City of London Special Jury—Interlocutory Applications.—Where a cause is to be tried with a special jury of the City of London it should be transferred to the commercial list, and all interlocutory applications after its transfer should be made to the judge in charge of such list.

BARNES v. LAWSON, 16 Com. Cas. 74—Scrutton, [J.]

PRESCRIPTION.

See EASEMENTS; HIGHWAYS; MINES AND MINERALS; REAL PROPERTY AND CHATTELS REAL; WATERS AND WATERCOURSES.

PRESS AND PRINTING.

See also CONTEMPT, No. 1; PRACTICE, No. 22.

1. Newspaper—Right to Title—Confusion—Deception—Injunction.—An injunction to restrain the publication of a newspaper under

a name similar to that of an existing newspaper will not be granted unless it be proved that such publication causes confusion and deception, and that actual or probable damage results therefrom.

GEORGE OUTRAM & Co., LD. v. LONDON EVENING NEWSPAPERS Co., LD., 27 T. L. R. 231; 55 Sol. Jo. 255; 28 R. P. C. 308—Warrington, J.

PRESUMPTION.

See EASEMENTS; EVIDENCE; HIGHWAYS.

PREVENTION OF CRIME.

See CRIMINAL LAW AND PROCEDURE, I. (g).

PREVENTION OF CRUELTY TO CHILDREN.

See CRIMINAL LAW AND PROCEDURE.

PRINCIPAL AND AGENT.

See AGENCY.

PRINCIPAL AND SURETY.

See BANKRUPTCY AND INSOLVENCY; BILLS OF EXCHANGE; GUARANTEE.

PRINCIPALS AND ACCESSORIES.

See CRIMINAL LAW AND PROCEDURE.

PRISONS AND REFORMATORIES.

[No paragraphs in this vol. of the Digest.]

PRIVATE BILLS.

See CROWN PRACTICE, No. 3; TRAMWAYS, Nos. 1, 3.

PRIVATE STREET WORKS.

See HIGHWAYS, STREETS, AND BRIDGES, XII.

PRIVATE WAYS.

See EASEMENTS.

PRIVILEGE.

See DISCOVERY; EVIDENCE: LIBEL AND SLANDER.

PRIVY COUNCIL.

See COURTS; DEPENDENCIES AND COLONIES.

PRIZE FIGHTING.

See CRIMINAL LAW AND PROCEDURE.

PROBATE DUTY.

See DEATH DUTIES.

PROBATE OF WILLS.

See EXECUTORS AND ADMINISTRATORS.

PROBATION OF OFFENDERS.

See CRIMINAL LAW AND PROCEDURE, Nos. 23, 30.

PROCESS.

See PRACTICE AND PROCEDURE.

PROFITS À PRENDRE.

See EASEMENTS AND PROFITS À PRENDRE; FISHERIES, Nos. 1, 2, 3.

PROMISSORY NOTE.

See BILLS OF EXCHANGE AND PROMISSORY NOTES.

PROPERTY TAX.

See INCOME TAX.

PROSTITUTION.

See CRIMINAL LAW AND PROCEDURE.

PROVIDENT SOCIETIES.

See INDUSTRIAL AND PROVIDENT SOCIETIES.

PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

I. THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

- (a) Application of Act 500
(b) Costs as between Solicitor and Client 500

[No paragraphs in this vol. of the Digest.]

- (c) Limitation of Actions 501

II. ACTS OF STATE 501
[No paragraphs in this vol. of the Digest.]

III. PUBLIC OFFICERS 501
[No paragraphs in this vol. of the Digest.]

I. THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

(a) Application of Act.

1. *Workmen's Compensation for Injuries by Accident—Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—Sect. 1 of the Public Authorities Protection Act, 1893, has no application to proceedings for compensation under the Workmen's Compensation Act, 1906.

FRY v. CHELTENHAM CORPORATION, [1911] [W. N. 199; 81 L. J. K. B. 41; 105 L. T. 495; 28 T. L. R. 16; 56 Sol. Jo. 33—C. A.]

- (b) *Costs as Between Solicitor and Client.*
[No paragraphs in this vol. of the Digest.]

I. The Public Authorities Protection Act, 1893 — *Continued.*

(c) Limitation of Actions.

See also WATERS, No. 5.

2. "*Statute of Limitations*"—*County Court—Notice of Special Defence—County Court Rules, 1903 and 1904, Ord. 10, rr. 14, 18 (1)—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).*—The Public Authorities Protection Act, 1893, is a statute of limitations, for it imposes a limitation of time on an existing cause of action, and there is nothing in the rest of the Act to prevent its being so considered.

Accordingly, a public authority wishing to plead the Act as a special defence in the county court do so sufficiently if they plead "that the claim for which the defendants are summoned is barred by a statute of limitations."

GREGORY v. TORQUAY CORPORATION, [1911]
[2 K. B. 556; 80 L. J. K. B. 981; 105
L. T. 138; 75 J. P. 416; 55 Sol. Jo. 582; 9
L. G. R. 772.—Div. Ct.]

AFFIRMED ON APPEAL, 132 L. T. Jo. 153;
46 L. J. N. C. 788—C. A.

II. ACTS OF STATE.

[No paragraphs in this vol. of the Digest.]

III. PUBLIC OFFICERS.

[No paragraphs in this vol. of the Digest.]

PUBLIC COMPANY.

See COMPANIES.

PUBLIC DOCUMENTS.

See DISCOVERY; EVIDENCE.

PUBLIC ELEMENTARY SCHOOLS.

See EDUCATION.

PUBLIC HEALTH.

I. HOUSING. COL.

(a) Common Lodging House . . . 502

[No paragraphs in this vol. of the Digest.]

(b) Housing of the Working Classes . . . 502

[No paragraphs in this vol. of the Digest.]

II. MILK, MEAT, AND WATER SUPPLY . . . 502

[No paragraphs in this vol. of the Digest.]

III. VACCINATION . . . 502

[No paragraphs in this vol. of the Digest.]

IV. HOSPITALS AND INFECTIOUS DISEASES . . . 502

V. NUISANCE: ABATEMENT AND EXPENSES . . . 502

[No paragraphs in this vol. of the Digest.]

VI. EARTH AND WATER CLOSETS . . . 502

VII. HOURS OF EMPLOYMENT . . . 502

[No paragraphs in this vol. of the Digest.]

VIII. SLAUGHTER-HOUSES . . . 502

[No paragraphs in this vol. of the Digest.]

IX. FIRE BRIGADE . . . 502

X. BYE-LAWS . . . 502

[No paragraphs in this vol. of the Digest.]

XI. PRACTICE . . . 502

XII. MISCELLANEOUS . . . 503

See also FOOD AND DRUGS; HIGHWAYS,
Nos. 17, 19; LOCAL GOVERNMENT;
NEGLIGENCE, No. 1; WATERS, No. 5.

I. HOUSING.

(a) Common Lodging House.

[No paragraphs in this vol. of the Digest.]

(b) Housing of the Working Classes.

[No paragraphs in this vol. of the Digest.]

II. MILK, MEAT, AND WATER SUPPLY.

[No paragraphs in this vol. of the Digest.]

III. VACCINATION.

[No paragraphs in this vol. of the Digest.]

IV. HOSPITALS AND INFECTIOUS DISEASES.

See NEGLIGENCE, No. 21.

V. NUISANCE: ABATEMENT AND EXPENSES.

[No paragraphs in this vol. of the Digest.]

VI. EARTH AND WATER CLOSETS.

See No. 2, *infra*.

VII. HOURS OF EMPLOYMENT.

[No paragraphs in this vol. of the Digest.]

VIII. SLAUGHTER-HOUSES.

[No paragraphs in this vol. of the Digest.]

IX. FIRE BRIGADE.

See NEGLIGENCE, No. 7.

X. BYE-LAWS.

[No paragraphs in this vol. of the Digest.]

XI. PRACTICE.

1. *Order to do Work—Non-compliance—Work done by Local Authority—Notice of Demand—Recovery of Expenses—Authentication of Notice—Signature—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 36, 257, 266.*—By sect. 266 of the Public Health Act, 1875, if notices under the Act require authentication by the local authority, the signature of the clerk to the local authority or their surveyor

XI. Practice--Continued.

or inspector of nuisances shall be sufficient authentication.

The appellant was required by the respondents, who were the local authority, to do certain work under sect. 36 of the above Act, and on her failure to do the work they did the work themselves and payment of the expenses was demanded of the appellant by a written notice signed by the respondents' rating surveyor, whose duty it was to sign all notices demanding payment of such expenses. The respondents subsequently took proceedings to recover the expenses, and it was objected that the notice required authentication, and therefore ought to have been signed by the respondents' clerk, surveyor or inspector of nuisances.

HELD—that the notice did not require authentication within the meaning of sect. 266, and that therefore the signature referred to in that section was not necessary.

WILLIS v. ROTHERHAM CORPORATION, 105 L. T. [436; 75 J. P. 421; 9 L. G. R. 948—Div. Ct.

XII. MISCELLANEOUS.

2. *Recovery of Expenses — Notice to Put Closets in Four Houses — Work Done by Local Authority in Five Houses — Summons Within Three Months for Four-fifths of Total Expense — "Settled and Apportioned"* — *Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 36, 257.]—By sect. 257 of the Public Health Act, 1875, where a local authority have incurred expenses for the repayment of which the owner of the premises in respect of which they were incurred is made liable under the Act, the owner has, where such expenses have been settled and apportioned by the surveyor, a period of three months in which to dispute such apportionment.

The appellant and two other persons, who as trustees were the owners of eight houses in the district of the respondents, a rural district council, were summoned by the respondents for £5 9s. 9d., expenses incurred by the respondents in putting an earth-closet in each of four of the houses. The respondents had given notice to the owners in question to provide four of the houses with a sufficient closet, but the owners did not do the work, and it was done to five of their houses by the respondents, no notice having been given in respect of one of the houses, and it being admitted that the respondents had no right to do the work at the fifth house. The expense of the work at the five houses amounted to £6 17s. 2d., and the respondents, therefore, deducted one-fifth of the expense for the house in respect of which no notice had been given, leaving a sum of £5 9s. 9d. The respondents' surveyor had certified that he had "settled and apportioned" the sum payable by the three owners in respect of the work at the four houses to be £1 7s. 5½d. per house, making a total of £5 9s. 9d., the sum claimed, and notice to that effect was given to each of the owners.

HELD—that the division of the expenses was not a settlement and apportionment within the meaning of the above provision, since it was not an apportionment between different owners but was merely a division of the expenses between the council on the one hand and the three owners on the other, and that therefore the respondents were not bound, before taking proceedings, to wait until three months after the service of notice of the so-called "settlement and apportionment."

BOWER v. CAISTOR RURAL DISTRICT COUNCIL, [75 J. P. 186; 9 L. G. R. 448—Div. Ct.

PUBLIC LIBRARIES.

See LOCAL GOVERNMENT; RATES.

PUBLIC MEETINGS.

See CRIMINAL LAW AND PROCEDURE.

PUBLIC SAFETY AND ORDER.

See EXPLOSIVES; HIGHWAYS; LOCAL GOVERNMENT; METROPOLIS; PUBLIC HEALTH; STREET TRAFFIC; THEATRES, ETC.

PUBLIC TRUSTEE.

See EXECUTORS, No. 9; TRUSTS, XI.

PUBLIC WORSHIP.

See ECCLESIASTICAL LAW.

PUNISHMENT.

See CRIMINAL LAW AND PROCEDURE; PRISONS.

QUANTUM MERUIT.

See BUILDING CONTRACTS; CONTRACTS, ETC.

QUARRIES.

See MINES, MINERALS, AND QUARRIES.

QUARTER SESSIONS.

See CRIMINAL LAW AND PROCEDURE;
MAGISTRATES.

QUEENSLAND.

See DEPENDENCIES AND COLONIES.

RAILWAYS AND CANALS.

I. RAILWAYS.

COL.

- (a) Construction.
 (i.) Accommodation Works . . . 505
 [No paragraphs in this vol. of the Digest.]
 (ii.) Parliamentary Deposits . . . 505
 [No paragraphs in this vol. of the Digest.]
 (iii.) In General . . . 505
 (b) Working and Management.
 (i.) In General . . . 506
 (ii.) Rates . . . 507
 (iii.) Passenger Fares . . . 510
 (iv.) Mails . . . 510
 [No paragraphs in this vol. of the Digest.]
 (v.) Duty towards Passengers . . . 510
 (vi.) Trespass on Railway . . . 510
 (vii.) Locomotives . . . 511
 [No paragraphs in this vol. of the Digest.]
 (viii.) Receivers . . . 511
 [No paragraphs in this vol. of the Digest.]

II. CANALS 511

III. RAILWAY AND CANAL COMMISSION 511

I. RAILWAYS.

See also ARBITRATION, No. 6; CARRIERS,
 II.; DEPENDENCIES, Nos. 13, 15,
 30; MINES, Nos. 3, 4, 5; RATES,
 Nos. 6, 7, 8, 9.

(a) Construction.

- (i.) Accommodation Works.
 [No paragraphs in this vol. of the Digest.]
 (ii.) Parliamentary Deposits.
 [No paragraphs in this vol. of the Digest.]

(iii.) In General.

1. *Minerals—Right to Support—Mines Lying Beyond the Forty Yards Limit—Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 77–85.]—The mining sections (ss. 77–85) of the Railways Clauses Consolidation Act, 1845, are not confined to lands acquired by a railway company under its compulsory powers, but extend to lands acquired by voluntary purchase after the expiration of its compulsory powers.

Two seams of coal underlying an area of land which included the site of a railway tunnel were demised to the defendants, and by the lease the other mines and minerals underlying the area were reserved to the owners.

Subsequently, by an indenture which recited that the defendants had given to the railway notice of their intention to work the mines lying under, adjoining, and near the railway, and that the railway company had required the same to be left unworked and had contracted for the purchase thereof at a named price, the defendants, in consideration of that sum, assured to the railway company all their leasehold interest in so much of the two seams as lay within and under the respective areas of land therein mentioned. By another indenture the persons entitled to the demised seams in reversion, in consideration of a sum of money, conveyed to the railway company their freehold reversion to the coal to be left ungoten.

HELD—that the railway did not get thereby any right of support from the minerals underlying the two seams.

By another lease the defendants became the lessees of a further seam of coal underlying the railway company's tunnel and adjacent lands. The defendants gave notice of their intention to work this seam in the vicinity of the tunnel, and it was proved that such working would cause serious risk to the railway and works within an area the limits of which extended beyond the prescribed distance of forty yards.

HELD—that the railway company were entitled to an injunction to restrain the defendants from working minerals outside the forty yards limit in such a manner as to withdraw lateral support from the tunnel.

Decision of Eve, J. ([1910] W. N. 163; 103 L. T. 26; 26 T. L. R. 541; 54 Sol. Jo. 616) varied.

LONDON AND NORTH WESTERN RY. CO. v. [HOWLEY PARK COAL AND CANNEL CO., [1911] 2 Ch. 97; 80 L. J. Ch. 537; 104 L. T. 546; 27 T. L. R. 389; 55 Sol. Jo. 459—C. A.

(b) Working and Management.

See also NEGLIGENCE, X.

(i.) In General.

2. *Running Powers over another Line—General Traffic—Railway Junction by Third Company for Limited Traffic—Amalgamation of Running Company with Junction Railway—Effect of Amalgamation—Railways Clauses Act, 1863* (26 & 27 Vict. c. 92), ss. 38, 39, 41, 55.]—Under a special Act of 1865 the plaintiff company obtained general running powers over the defendant company's M. to W. line. In 1897 the Derbyshire Railway Company, whose line crossed the defendant company's said line at S., constructed under the powers of a special Act a short line (called the S. curve) and a junction connecting their line with the defendant company's said line at S., and, under an agreement with the defendant company, were granted running powers over so much of the defendant company's line as lay between the junction and a colliery on the defendant company's line for coal traffic to and from the colliery by way of the S. curve and junction.

1. Railways *Continued.*

In 1906 the plaintiff company and the Derbyshire Railway Company were amalgamated under a special Act which incorporated the amalgamation provisions of the Railways Clauses Act, 1863, and the Derbyshire Railway Company was dissolved. The plaintiff company now claimed that, as owners of the Derbyshire Railway Company's undertaking, they were entitled to bring general traffic over the S. curve and junction and then, by virtue of their general running powers under the Act of 1865, to pass such traffic over the defendant company's line to and from M.

Held—that under sects. 38 and 39 of the Railways Clauses Act, 1863, the plaintiff company's right to use the S. curve and junction was limited to such rights as were possessed by the Derbyshire Railway Company at the time of the amalgamation.

Midland Ry. Co. v. Great Western Ry. Co. ((1873) L. R. 8 Ch. 841) distinguished.

Decision of Neville, J. ([1911] 2 Ch. 173; 80 L. J. Ch. 602; 104 L. T. 844) reversed.

GREAT CENTRAL RY. CO. v. MIDLAND RY. CO., [1911] W. N. 252; 56 Sol. Jo. 160—C. A.

3. Working of Leased Railway—Obligation by Lessees to “Use their Best Endeavours to Develop Traffic of Lessors.”—The defendant company undertook to “use their best endeavours” to develop the through and local traffic of the appellants.

Held—that the defendants had thereby assumed a *quasi-fiduciary* position to the applicants—a position similar to that of a bailiff or agent—and that they were bound to treat the applicants at least as well as they treated themselves in the matter of traffic.

SHEFFIELD DISTRICT RY. CO. v. GREAT CENTRAL [RY. CO.], 27 T. L. R. 451—Rly. and Can. Com.

(ii.) Rates.

See also No. 13, *infra*; CARRIERS, II.; RATES, No. 7.

4. Trader's Vans—Deficiency of Railway Company's Vans—Reasonable Facility—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2.—Where there is a shortage in a railway company's trucks or vans, and a trader asks to have his goods carried in his own trucks or vans, he is asking for a “reasonable facility” within sect. 2 of the Railway and Canal Traffic Act, 1854, and he is entitled in such circumstances to have the charge for conveyance reduced. There is, however, no other obligation on a railway company to haul the ordinary goods of a trader in the latter's own trucks.

Decision of Rly. and Can. Com. ([1910] 1 K. B. 778; 79 L. J. K. B. 771; 102 L. T. 654; 26 T. L. R. 315) affirmed.

SPILLERS AND BAKERS, LD. v. GREAT WESTERN [RY. CO. (ASSOCIATION OF PRIVATE OWNERS OF RAILWAY ROLLING STOCK, INTERVENERS)], [1911] 1 K. B. 386; 80 L. J. K. B. 401; 103 L. T. 685; 27 T. L. R. 97; 55 Sol. Jo. 75—C. A.

5. Demurrage on Wagons—Siding Rent—Traders' Wagons—Reasonable Facility.—The Caledonian, the Glasgow and South Western, and the North British Railway Companies are entitled to claim in respect of the detention before conveyance of their wagons and sheets after the expiry of one day from the time the wagons or sheets are supplied. They are entitled to claim for the detention of wagons and sheets after conveyance, in the case of shipment and siding traffic, after the expiry of four days from the time of arrival of the wagons or sheets at the port or siding, and in the case of station traffic, after the expiry of four days from the notice of arrival of the wagons or sheets at the station. In the case of coal for shipment an extra day should be allowed before conveyance free of demurrage.

A trader cannot be called upon to pay for delay in conveyance which has been occasioned by fog, snow, frost, or causes of a similar character, or by some error on the part of the railway company's servants. The accounts as rendered by the railway company to the trader should charge him with what the company is entitled to recover, and no more, as they have the means of knowing through their servants when this delay has occurred during the period of conveyance.

The question whether it is a reasonable facility that goods should be conveyed in traders' trucks is one of fact, and necessarily depends on the circumstances of the case. In considering that question, the Railway Commissioners are not confined to the convenience of the traders in a particular case, but may take into consideration the interests of the railway company as well as those of the trader, the comparative cost and convenience, and the effect of the facility sought on other traders and the public using the line.

CALEDONIAN RY. CO., GLASGOW AND SOUTH [WESTERN RY. CO., AND NORTH BRITISH RY. CO. v. LANARKSHIRE COALMASTERS' ASSOCIATION], 27 T. L. R. 221; *sub nom.* *CALEDONIAN RY. CO. AND OTHERS v. COLT-NESS IRON CO. AND OTHERS. JOHN WATSON, LD., AND OTHERS v. CALEDONIAN RY. CO. AND OTHERS*, 48 Sc. L. R. 1065—Rly. and Can. Com.

6. Through Rates—Apportionment Between Railway Companies—Reasonable Facilities—Existing Through Rates—Application to Re-apportion—Jurisdiction of Court—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 25.—The Railway and Canal Commission Court has no jurisdiction, under sect. 25 of the Railway and Canal Traffic Act, 1888, or otherwise, on the application of a railway company to re-apportion as between railway companies themselves existing through rates, which have already been apportioned between the different carrying companies, inasmuch as the reasonable facility to the public continues the same so long as the through rate exists and the total amount thereof remains unaltered.

Decision of Rly. and Can. Com. ([1910] 2

I. Railways—Continued.

K. B. 913; 79 L. J. K. B. 1103; 103 L. T. 317) affirmed.

MANCHESTER SHIP CANAL CO. v. LONDON AND [NORTH WESTERN RY. CO., [1911] 1 K. B. 657; 80 L. J. K. B. 676; 104 L. T. 81—C. A.

7. *Undue Preference—Coal Wharves Let by One Company on Terms Disadvantageous to Other Company—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2.*—The defendant railway company, in letting land for coal wharves, inserted a clause the effect of which was to prevent the tenants from taking or receiving off the defendants' railway on to those wharves traffic routed *via* the London and North-Western Railway. The London and North-Western Railway complained that the defendants thereby unduly preferred a competitive railway company and unduly prejudiced them.

HELD—that the defendant company's power to let its land flowed from its ownership thereof, and not from any powers conferred upon it *qua* railway company, and that the agreements entered into by the defendant company did not constitute an infringement of sect. 2 of the Railway and Canal Traffic Act, 1854.

LONDON AND NORTH WESTERN RY. CO. v. [SOUTH EASTERN RY. CO., [1911] 1 K. B. 534; 80 L. J. K. B. 484; 104 L. T. 349; 27 T. L. R. 172—Rly. and Can. Com.

8. *Classification—Motor, Chassis—"Carriage."*—A motor chassis which can be used on the road comes within the definition of "carriage" for the purposes of railway charge under the Provisional Order Acts, 1891 to 1892. If, however, the chassis cannot be used on the road it is not a "carriage" for this purpose, and it is for the Board of Trade to decide how it should be classified.

LONDON AND NORTH WESTERN RY. CO. AND [OTHER RAILWAY COMPANIES, MEMBERS OF THE RAILWAY CLEARING HOUSE v. SOCIETY OF MOTOR MANUFACTURERS AND TRADERS, LD., 27 T. L. R. 518—Rly. and Can. Com.

9. *Misdescription of Goods by Owner—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 98, 99.*—By sect. 99 of the Railways Clauses Consolidation Act, 1845, a penalty is imposed upon the owner of goods if he gives a false account of the goods with intent to avoid payment of any tolls payable in respect thereof.

The appellants consigned by rail from Birmingham to Bedford a stator forming part of a single-phase alternator generator. The stator consisted of a large ring-like casting about 7 ft. in diameter bearing or carrying upon it iron laminations and metal cores with their windings of wire, but was divided into two parts and packed in two cases. The consignment note described the goods as "bearers," and stated that they were to be sent at owner's risk. The rate between Birmingham and Bedford for "bearers" at owner's risk was published in the rate book of the railway company as 9s. 2d. a ton,

and the rate for generators in parts at company's risk was published at 22s. 9d. No rate was in force for generators in parts at owner's risk. The goods were accepted as bearers at owner's risk and charged at the rate of 9s. 2d. a ton.

On a summons against the appellants under the above section, the justices found that a false account was given in order to avoid payment of the tolls, and they convicted the appellants.

HELD—that there was evidence to support the conviction.

GENERAL ELECTRIC CO., LD. v. EVANS, 105 [L. T. 199; 75 J. P. 106—Div. Ct.]

(iii.) Passenger Fares.

10. *Cheap Trains—Application for Additional Workmen's Trains—Cheap Trains Act, 1883 (46 & 47 Vict. c. 34).*—In considering an application under the Cheap Trains Act, 1883, for an order that additional workmen's trains should be run, the Railway and Canal Commissioners have to take into account, not only what the workmen can afford to pay, but also the circumstances of the railway company, the cost of running, and the cost of the construction and maintenance of the line and stations.

LONDON COUNTY COUNCIL AND GREAT EASTERN [RY. CO., WOODFORD AND OTHER URBAN DISTRICT COUNCILS INTERVENING, 75 J. P. 391; 27 T. L. R. 317; 9 L. G. R. 1071—Rly. & Can. Com.

(iv.) Mails.

[No paragraphs in this vol. of the Digest.]

(v.) Duty towards Passengers.

See also NEGLIGENCE, No. 13.

11. *False Imprisonment—Special Constable—Liability of Company for Acts of Constable—Great Eastern Railway (General Powers) Act, 1900 (63 & 64 Vict. c. ex.), s. 50.*—Under sect. 50 of the Great Eastern Railway (General Powers) Act, 1900, the relation of master and servant is created between the railway company and a special constable appointed by virtue of that section; and if such constable arrests a person on suspicion of felony without reasonable grounds for believing that a felony has been committed by him the railway company is liable.

Goff v. Great Northern Ry. Co. ((1861) 3 E. & E. 672) and Edwards v. Midland Ry. Co. ((1880) 50 L. J. Q. B. 281) approved.

LAMBERT v. GREAT EASTERN RY. CO., [1909] 2 K. B. 776; 79 L. J. K. B. 32; 101 L. T. 408; 73 J. P. 445; 25 T. L. R. 734; 53 Sol. Jo. 732; 22 Cox, C. C. 165—C. A.

(vi.) Trespass on Railway.

See also NEGLIGENCE, No. 13.

12. *Bona Fide Claim of Right of Way—Possibility of Right in Law—Jurisdiction of Justices.*—A railway company can dedicate a way to the

I. Railways -Continued.

public over their property, including their railway line, provided it is not incompatible with the use of their property for the objects and obligations for which they hold it.

A member of the public who claimed a right of way along a railway was summoned before justices for trespassing on such railway. The justices held that the claim was a *bonâ fide* and honest one and was not impossible in law, and that it raised a question of title and was outside their jurisdiction, and they dismissed the summons.

HELD—that the justices were right, as there was a *bonâ fide* claim of right and their jurisdiction was ousted.

ARNOLD v. MORGAN, [1911] 2 K. B. 314; 80 [L. J. K. B. 955; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917—Div. Ct.

See S. C. under MAGISTRATES, II.

(vii.) Locomotives.

[No paragraphs in this vol. of the Digest.]

(viii.) Receivers.

[No paragraphs in this vol. of the Digest.]

II. CANALS.

See FISHERIES, No. 3; HIGHWAYS, No. 12.

III. RAILWAY AND CANAL COMMISSION.

See also No 6, *supra*.

13. Jurisdiction to Allow Intervention—Group Rates—London Port Authority—Application to Fix Through Rates to Docks—Right of Railway Companies to Intervene—Port of London Act, 1908 (8 Edw. 7, c. 68), s. 31 (1).—By sect. 31, sub-sect. 1, of the Port of London Act, 1908, the lines of the docks belonging to the port authority are to be deemed to be a railway company for the purposes of the provisions of the Railway Acts relating to through rates, with the proviso that the Railway and Canal Commission “shall not fix such a through rate in any case in which it appears to them that it would be unjust or inexpedient to do so.” An application was made by the port authority against the Midland Railway Company for an order allowing certain through rates on rail-borne traffic between the London docks and certain towns. The London docks had been grouped for the purposes of the railway rates, and all the railway companies concerned had agreed to carry to and from the docks at these group rates. Two railway companies concerned in these group rates applied for leave to intervene on the ground that the granting of the application would be prejudicial to their rights under various agreements made between them and the several dock companies, the predecessors in title of the applicants.

HELD—that the Railway and Canal Commission has the ordinary jurisdiction of common law courts to allow intervention, and that, as the rights of the interveners might be affected by the fixing of the through rates, the court had jurisdiction to allow the intervention: and,

further, that the intervention ought to be allowed in this case upon the ground that without hearing the case of the interveners the Court could not say whether, within the proviso in sect. 31, sub-sect. 1, of the Act, the proposed through rates would be “just or expedient.”

PORT OF LONDON AUTHORITY v. MIDLAND RY. CO., GREAT EASTERN RY. CO. AND TOTTENHAM AND HAMPSTEAD JOINT COMMITTEE, 105 L. T. 558—Rly. and Can. Com.

RAPE.

See CRIMINAL LAW AND PROCEDURE.

RATES AND RATING.

	COL.
I. COUNTY RATE.	512
[No paragraphs in this vol. of the Digest.]	
II. DRAINAGE RATE	512
[No paragraphs in this vol. of the Digest.]	
III. GENERAL DISTRICT RATE.	
(a) In General.	512
[No paragraphs in this vol. of the Digest.]	
(b) Exemption.	512
[No paragraphs in this vol. of the Digest.]	
(c) Occupation.	513
(d) Retrospective Rate.	513
[No paragraphs in this vol. of the Digest.]	
IV. METROPOLITAN RATING.	513
[No paragraphs in this vol. of the Digest.]	
V. POOR RATE.	
(a) In General.	514
[No paragraphs in this vol. of the Digest.]	
(b) Appeal.	514
(c) Assessment.	515
(d) Distress.	517
(e) Occupation.	518
(f) Rateability.	518
VI. SEWER RATE	519
[No paragraphs in this vol. of the Digest.]	
VII. RECTOR'S RATE	519
[No paragraphs in this vol. of the Digest.]	

See also ROYAL FORCES, No. 1.

I. COUNTY RATE.

[No paragraphs in this vol. of the Digest.]

II. DRAINAGE RATE.

[No paragraphs in this vol. of the Digest.]

III. GENERAL DISTRICT RATE.**(a) In General.**

[No paragraphs in this vol. of the Digest.]

(b) Exemption.

[No paragraphs in this vol. of the Digest.]

III. General District Rate—Continued.

(c) Occupation.

1. *Reduction in Rates—Owners Who are also Occupiers—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1).*—Sect. 211 (1) of the Public Health Act, 1875, which provides that in certain cases the owner instead of the occupier may be rated to a general district rate at a reduced estimate of the net annual value, does not authorise the local authority to rate at such reduced estimate owners who are also occupiers of the premises rated.

R. v. PROPERT, *EX PARTE* JONES, [1911] 1 K. P. [83; 80 L. J. K. B. 98; 103 L. T. 844; 74 J. P. 474; 9 L. G. R. 38—Div. Ct.]

(d) Retrospective Rate.

[No paragraphs in this vol. of the Digest.]

IV. METROPOLITAN RATING.

See also Nos. 8, 9, *infra*.

2. *Alteration in Value—Public-house—Increase of Licence Duty—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47—Finance Act, 1910 (10 Edw. 7, c. 8).*—The increase of the licence duty under the Finance Act, 1910, imposed upon a public-house in the metropolis was from £35 to £130.

HELD—that this was *prima facie* evidence of a reduction in value of the public-house within sect. 47 of the Valuation (Metropolis) Act, 1869, so as to entitle the licensee to call upon the assessment committee to appoint a person to make a provisional list under that section containing the gross and rateable value of the public-house as reduced.

Decision of Div. Ct. (26 T. L. R. 553) affirmed.

R. v. SHOREDITCH ASSESSMENT COMMITTEE, [EX PARTE MORGAN, [1910] 2 K. B. 859; 80 L. J. K. B. 185; 103 L. T. 262; 74 J. P. 361; 26 T. L. R. 663; 8 L. G. R. 744—C. A.]

3. *Provisional List—Appeal against Rate—Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 4—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 47), s. 47.*—The appellants, who were the occupiers and owners of certain tramways in the metropolis which were inserted in a provisional list at increased gross and rateable values, appealed to quarter sessions against a general rate based upon the provisional list, and contended that as there had been no alteration in the tramways resulting in any increase of earnings, there was no power to insert them in a provisional list, and that therefore the provisional list was null and void and the rate was bad.

HELD—that quarter sessions had no jurisdiction to hear the appeal, as the question which it was attempted to raise before them was not that there was no evidence of increase in value, but that upon the evidence there had been no increase in value.

LONDON COUNTY COUNCIL v. SHOREDITCH [BOROUGH COUNCIL, 105 L. T. 515; 75 J. P. 386; 9 L. G. R. 939—Div. Ct.]

4. *Provisional List—Quinquennial List—List “subsequently made”—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47.*—In the quinquennial valuation list made in 1905 the plaintiff's premises were assessed at £400 gross value and £334 rateable value. After the passing of the Finance (1909-10) Act, 1910, those premises were inserted in a provisional list, which came into operation on June 30th, 1910, in which they were assessed at £319 gross and £266 rateable value. On May 30th, 1910, the defendants' common seal was affixed to the new quinquennial valuation list in which the plaintiff's premises were assessed at the same values as in the 1905 list. The plaintiff gave notice of objection to this list, which was finally approved by the assessment committee on October 31st, 1910, and in it the assessment of the premises was—gross value £180 and rateable value £150. The new quinquennial list came into force on April 6th, 1911. On April 12th, 1911, the defendants made a general rate in which the rateable value of the plaintiff's premises was shown as £266, and the plaintiff was rated therefor in the sum of £53 4s.

HELD—that the new quinquennial list, although sealed prior to the date of the provisional list, was a list “subsequently made” to the provisional list within sect. 47, sub-sect. 8, of the Valuation (Metropolis) Act, 1869; that, consequently, under that subsection, the provisional list was displaced by the quinquennial list on April 6th, 1911; that the plaintiff was only liable to be rated on the amount shown in the quinquennial list; and that under sect. 47, sub-sect. 10, he was entitled to be repaid the amount overpaid between June 30th, 1910, and March 31st, 1911, in consequence of the larger rateable value of £266 being stated in the provisional list.

Decision of Warrington, J. ([1911] 2 K. B. 822; 27 T. L. R. 532; 9 L. G. R. 983) affirmed.

PARRISH v. HACKNEY BOROUGH COUNCIL, 28 [T. L. R. 110; 56 Sol. Jo. 140; [1911] W. N. 253—C. A.]

V. POOR RATE.

See also HIGHWAYS, No. 15.

(a) In General.

[No paragraphs in this vol. of the Digest.]

(b) Appeal.

5. *Appeals Against Two Rates—Only One Objection to Assessment Committee—Both Rates Made Before Objection Decided—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.*—One objection to an assessment committee will not support an appeal against two rates, even though both rates have been made and have expired before the objection is decided by the committee.

MALTON GAS CO. v. MALTON UNION ASSESSMENT COMMITTEE, 75 J. P. 79—Qr. Sess.

V. Poor Rate—Continued.

(c) Assessment.

6. Railway—Railway Lines—Free Coal—Locomotives, etc., Made by Railway Company—Shop Charges—Builder's Profit—Statutable Deductions—Expense of Maintaining Viaduct.]—The fact that the part of the lines of a railway company in a particular parish carry free of charge in the accounts of the company the company's own coal to an extent far exceeding the average taken over the whole of the company's lines is a matter to be taken into account in determining the rateable value of the company's lines in such parish.

In valuing, for the purpose of ascertaining tenant's capital, the stock of locomotives, carriages and wagons made by the railway company itself, allowances may properly be made, in addition to wages and material, for shop charges and builder's profit.

The expense of repairing and maintaining a viaduct was held under the circumstances to be an expense that should be borne, for the purpose of determining the statutable deductions, by the parishes in which the viaduct was situated.

In estimating the amount of statutable deductions for the purpose of determining the rateable value of the railway line in a parish, no charge is to be made on account of the extra expense incurred by reason of the use of heavier rails and better ballast and sleepers in other parishes.
GREAT EASTERN RY. CO. v. BISHOP'S STORT-
[FORD UNION ASSESSMENT COMMITTEE
AND OVERSEERS OF PARISH OF THORLEY
75 J. P. 61—Qr. Sess.]

7. Railway—Coal in Owners' Waggon—One Route Loaded—Returning Empty by Another—Inclusive Charge—Gross Earnings.]—By the Great Northern Railway Company (Rates and Charges) Order Confirmation Act, 1891, where merchandise is conveyed in a trader's truck the company shall not make any charge in respect of the return of the truck empty, provided that it is returned direct to the consignor. A portion of the gross receipts earned by the appellants in a certain parish was earned in respect of coal hauled through the parish in owners' waggons, and the waggons when empty had to be hauled back to the place from which they had been consigned without further payment. Most of the waggons when empty were hauled back by a different route, not passing through the parish in question. Quarter sessions on an appeal decided that the charges which the appellants made for the conveyance of coal in owners' waggons were made for the joint service of hauling the waggons when full and hauling them back when empty, and that the amount of the actual gross earnings of the appellants' railway in the parish from coal carried in owners' waggons was to be arrived at by making a deduction in respect of the return of the waggons.

HELD—that the decision of quarter sessions was right.

GREAT NORTHERN RY. CO. v. HUNSLET UNION,
[105 L. T. 544; 75 J. P. 460; 9 L. G. R. 1202
—Div. Ct.]

8. Railway—Line Owned Jointly by Two Companies—Feeder—Contributive Value—Competition.]—The Great Western and Metropolitan Railway Companies were the joint owners of a line which connected with the systems of these companies. Assessed upon the parochial principle the rateable value of the line was *nil*; but, if the value of the line as a feeder to the systems of the two companies could properly be taken into consideration, the rateable value of the line was substantial.

HELD—that, there being no ascertained person or company who would be willing to give a rent for the line, the line should be assessed at a purely nominal value.

GREAT WESTERN AND METROPOLITAN RY.
[COMPANIES v. KENSINGTON ASSESSMENT
COMMITTEE, 75 J. P. 525—County of
London Qr. Sess.]

9. Railway—Connected with the Lines of Five Companies—Lease—Excess of Expenses over Receipts—Position, Connections, and Accommodation—Substantial Rateable Value.]—The East London Railway, which runs from the north to the south of the river Thames, and has connections with the lines of the Great Eastern Railway Company, the Metropolitan and Metropolitan District Railway Companies, the London, Brighton and South Coast and the South-Eastern and Chatham Railway Companies, was in 1882 leased in perpetuity to these companies at a minimum rent of £30,000 per annum. It was proved that, apart from the payment of rent, the expenses incident to the line had, since 1906, exceeded the receipts.

HELD—notwithstanding the decision of the House of Lords in *Great Central Ry. Co. v. Banbury Union* ([1909] A. C. 78), the Court was entitled to take into consideration the position, connections, and accommodation of the line, and to find that it had a substantial rateable value.

EAST LONDON RAILWAY JOINT COMMITTEE
[v. GREENWICH UNION ASSESSMENT COM-
MITTEE, 75 J. P. 527—County of London Qr.
Sess.]

10. Gasworks Company—Subsidiary Businesses—Asphalting Business—Gas Fittings Shop—Allowance for Repairs and Renewals beyond Amount Actually Spent.]—Where a gas company carries on subsidiary businesses, e.g., the asphalt-
ing of roads, paths, &c., or the sale of gas fittings at a shop separate from its works and separately assessed,

Seem, the profits derived from such businesses ought not to be included in calculating its rateable value.

Allowances for repairs and renewals considerably in excess of sums actually spent under those heads, approved on the ground that for some years past the company had unduly cut down expenses in the face of competition.

MALTON GAS CO. v. MALTON UNION ASSESS-
[MENT COMMITTEE, 75 J. P. 79—Qr. Sess.]

11. Licensed Premises—Rateable Value—Extra Licence Duties—Rate prior to passing of

V. Poor Rate—Continued.

*Act—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8).—*The imposition of extra licence duties by the Finance (1909-10) Act, 1910, is a matter which affects the rent obtainable for licensed premises, and must accordingly be taken into consideration in determining the rateable value of such premises.

The Finance (1909-10) Act, 1910, did not receive the Royal Assent until April 29th, 1910, and the extra licence duties imposed by the Act were not payable until July, 1910.

HELD, nevertheless—that the probability of the Act being passed was a matter to be taken into consideration in ascertaining the rateable value of licensed premises for the purposes of a rate made on April 1st, 1910.

JOSEPH JONES & Co. v. WEST DERBY UNION,
[75 J. P. 375—Qr. Sess.]

12. Public-house—Increased Licence Duty—Onus of Proof as to Value—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8).—The appellants, each of whom was both proprietor and occupier of licensed premises, claimed reductions of the former valuations of their respective premises on account of the increased licence-duty imposed by sect. 43 of the Finance (1909-10) Act, 1910.

HELD—that the increase in the duty established a *prima facie* case for reduction of the valuations, thus throwing upon the Assessor the onus of proving that the annual letting value of the premises had not been diminished, and that, as he had not discharged that onus, the valuations should be reduced.

DEARDS v. ASSESSOR FOR EDINBURGH, CLARK
[v. SAME, [1911] S. C. 918; 48 Sc. L. R. 360
—(Ct. of Sess.)]

13. Distillery—Increased Licence Duty—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8).—Where a distillery company's premises had been entered in the valuation-roll at the same figure as in previous years, although the Finance (1909-10) Act, 1910, had largely increased the licence-duty payable by the company:—

HELD—that the increased licence-duty did not fall to be taken into account in valuing the premises, the circumstances of a distillery being different from those of public-house premises.

NORTH BRITISH DISTILLERY CO., LD. v.
[ASSESSOR FOR EDINBURGH, [1911] S. C.
927; 48 Sc. L. R. 365—Ct. of Sess.]

(d) Distress.

14. Distress Warrant—Justices—Jurisdiction to Refuse Warrant.—Justices are not bound to issue a distress warrant if on the undisputed facts before them it follows as a matter of law that the name of the person rated or that of the property in respect of which he is rated ought not to have been inserted in the rate-book.

WIXON v. THOMAS, LAMBERT v. THOMAS,
[BURROWS v. THOMAS, [1911] 1 K. B. 43; 80
L. J. K. B. 104; 103 L. T. 731; 75 J. P. 58;
27 T. L. R. 35; 8 L. G. R. 1042—Div. Ct.]

See S. C. under ROYAL FORCES.

(e) Occupation.

15. Gathering Ground for Waterworks—Land Left Vacant to Prevent Pollution.—The L. Corporation were the owners of waterworks, and they purchased a large area of land which formed a gathering ground for such waterworks. They let the sporting rights over such land, and the lessee was rated in respect of such sporting rights. In order to diminish risk of pollution they kept the gathering ground unoccupied.

HELD—that the L. Corporation were in rateable occupation of the gathering ground.

LIVERPOOL CORPORATION v. CHORLEY UNION
[ASSESSMENT COMMITTEE AND WITHNELL
OVERSEERS, [1911] 1 K. B. 1057; 80 L. J.
K. B. 626; 104 L. T. 21; 75 J. P. 252;
27 T. L. R. 230; 9 L. G. R. 263—Div. Ct.]

AFFIRMED ON APPEAL, 132 L. T. Jo. 202;
Times, December 22nd, 1911—C. A.

16. Exclusive Occupation—Warehouses—Demise by Harbour Board—Power of Board to Demise—Right of Access by Lessors—Rateable Occupation of Lessees—Mersey Docks and Harbour Board (Consolidation) Act, 1858 (21 & 22 Vict. c. xcii), ss. 64, 80, 82.—For the storage, blending and manipulation of wines and spirits in bond certain warehouses were demised for a period of seven years to a firm of wine and spirit merchants by the Mersey Docks and Harbour Board in pursuance of the power contained in a private Act which provided that the board might set apart any particular portion of any warehouses for the exclusive accommodation and use of any firm engaged in a particular trade, provided that the firm should be subject to the regulations of the board. The premises were within the dock walls, and access to them could only be obtained by passing through gates and over land under the exclusive control of the board. The entrance was by a door which had two locks, the key of one being kept by the Customs, and the key of the other by the firm. The board had a right of access to the premises at all reasonable times. There were in the premises a crane and a lift which were the property of the board, and the user of them was subject to the payment of a tonnage rate to the board.

HELD—that the board had power either by statute or at common law to make a demise giving the lessees a rateable occupation, and that the lessees were in fact in rateable occupation.

Allan v. Liverpool Overseers and Inman v. Kirkdale Overseers ((1874) L. R. 9 Q. B. 180), and Rochdale Canal Co. v. Brewster ([1894] 2 Q. B. 852) distinguished.

YOUNG & Co. v. LIVERPOOL ASSESSMENT COMMITTEE, [1911] 2 K. B. 195; 80 L. J. K. B. 778; 104 L. T. 676; 75 J. P. 233;
9 L. G. R. 366—Div. Ct.]

(f) Rateability.

17. Sewers Underground and Overground—Payment Received for Use of Sewers—Beneficial Occupation.—Under statutory powers the appellants

V. Poor Rate—Continued.

acquired easements through lands in Kent and constructed and maintained main sewers which were laid partly in private lands and partly in public highways. Some of the sewers were wholly underground; the others were partly underground and partly overground. They were constructed and maintained by levying the statutory rates. The appellants made no profit from their occupation of the sewers, but received payments from occupiers of mills and other persons for leave to discharge their sewage or trade refuse into the sewers:—

HELD—that sewers whether overground or underground are rateable where the occupation is “valuable” within the meaning of the authorities on rating, and that the appellants were rateable in respect of all the sewers.

West Ham v. London County Council ([1893] A. C. 562, 597) discussed.

Decision of C. A. (74 J. P. 129; 8 L. G. R. 287) affirmed.

WEST KENT MAIN SEWERAGE BOARD v. DART-FORD UNION ASSESSMENT COMMITTEE, [1911] A. C. 171; 80 L. J. K. B. 805; 104 L. T. 357; 75 J. P. 305; 55 Sol. Jo. 347; 9 L. G. R. 511 —H. L.

VI. SEWER RATE.

[No paragraphs in this vol. of the Digest.]

VII. RECTOR'S RATE.

[No paragraphs in this vol. of the Digest.]

RATIFICATION.

See AGENCY.

REAL PROPERTY AND CHATTELS REAL.

I. GENERAL	COL. 519
[No paragraphs in this vol. of the Digest.]	
II. ESTATES TAIL.	
(a) General	519
[No paragraphs in this vol. of the Digest.]	
(b) Disentailing	520
III. LAND TRANSFER	520
IV. MERGER	521

See also EXECUTORS, No. 23.

I. GENERAL.

[No paragraphs in this vol. of the Digest.]

II. ESTATES TAIL.

See also PERPETUITIES, No. 2; SETTLEMENTS, No. 5; WILLS, No. 47.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) Disentailing.

1. *Will—Construction—Estate Tail in Possession—Cutting Down Clause—Disentailing Deed—Accumulations.*]—A testator left his residuary real estate to trustees in strict settlement, with an accumulation clause for the benefit of the person or persons who should at the expiration of a period be entitled under the trusts and limitations of his will to the possession and enjoyment of the real estate thereby devised. On the vesting of the first estate tail in the plaintiff (but before the period had expired), the plaintiff barred the entail.

HELD—that the interest of the trustees was merely in the nature of a charge; that the plaintiff was, ever since his estate tail vested, in possession and enjoyment under the will; that, therefore, even if the disentailing deed had not put an end to the trust for accumulation, the plaintiff and his heirs and assigns were now the only persons who could become entitled to the accumulations; and that, therefore, the plaintiff was entitled to enter into possession and receive the income of the property.

IN RE TREVANTON, TREVANION v. LENNOX, [1910] 2 Ch. 538; 80 L. J. Ch. 93; 103 L. T. 212; 54 Sol. Jo. 749—Joyce, J.

III. LAND TRANSFER.

See also MORTGAGE, XII.

2. *Registered Leasehold—Mortgage by Sub-demise—Sale by Mortgagee—Duty of Vendor to Get Himself Registered as Proprietor—“Registered Land”—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 16 (2).*]—The owner of a leasehold interest in certain houses mortgaged them by way of sub-demise for the residue of the term less the last day thereof. The assignee of the mortgagor procured himself to be put as proprietor of the term on the leasehold register at the Land Registry. The assignee of the mortgagee having died, his executor sold the term, less the last day thereof, under his statutory power of sale. The purchaser required that the vendor should at his own expense procure himself to be registered as proprietor of the land, so as to be able to execute a proper transfer to the vendor, and so as to be able to give the vendor authority to inspect the register.

HELD—that as the land was registered for the whole of the residue of the term, and as the vendor was only selling a portion of that term, he was not selling registered land within the meaning of sub-sect. 2 of sect. 16 of the Land Transfer Act, 1897, and that therefore the purchaser could not insist upon his requisitions.

IN RE VOSS AND SAUNDERS'S CONTRACT, [1911] 1 Ch. 42; 80 L. J. Ch. 33; 103 L. T. 493; 55 Sol. Jo. 12—Warrington, J.

3. *Practice—Land Registry—Lease—Under-lease—Charge—Land Transfer Act, 1875 (38 & 39 Vict. c. 87), ss. 22, 24, 28.*]—P. and G., assignees of a lease, granted to E. an underlease, which was afterwards transferred to D. D. assigned to P. and P. executed a charge to D. The title of E., the assignment to P., and the

III. **Land Transfer—Continued.**
charge to D. were registered. Thereafter P. surrendered the term granted by the underlease to P. and G., that it might be merged in their reversionary term. The surrender deed, reciting rent in arrear and breaches of covenant entitling P. and G. to re-enter, was produced to the registrar by P. and G., who asked to have the underlease struck off the register, leaving their title free. The registrar objected that he had no power to remove the registered charge to D. P. and G. then brought this action against E., D., and P. claiming possession, a declaration of re-entry, and an order that the register of title to the underlease might be satisfied by a notification thereon that the underlease had determined and all incumbrances thereon had been satisfied and discharged. On motion for judgment in default of defence, Eady, J., made a declaration that P. and G. were entitled to re-enter and gave judgment for possession with a direction for rectification of the register by declaring the determination of the underlease, thus leaving the charge to D. upon the register.

PANTLIN *v.* EVANS, [1911] W. N. 80—Eady, J.

IV. **MERGER.**

See MORTGAGE, No. 2.

RECEIPT.

See EVIDENCE ; REVENUE.

RECEIVERS.

	COL.
I. IN PARTNERSHIP PROCEEDINGS	521
II. BY WAY OF EQUITABLE EXECUTION	522
III. IN GENERAL	523
See also COMPANIES, Nos. 10, 37 ; EXECUTORS, No. 13 ; METROPOLIS, No. 18 ; SHIPPING, No. 30.	

I. **IN PARTNERSHIP PROCEEDINGS.**

See also CONTEMPT, No. 2.

1. *Receiver and Manager—Partnership Action—Receiver's Right to Indemnity.*—A receiver and manager who has been appointed by the Court in an action—for example, a partnership action—is not a trustee, nor is he the agent of the parties, and he cannot look to them, but only to the assets under the control of the Court, for indemnity in respect of expenditure properly incurred by him. The fact that he has been appointed by consent of all parties makes no difference in this respect.

BOEHM *v.* GOODALL, [1911] 1 Ch. 155 ; 80 [L. J. Ch. 86 ; 103 L. T. 717 ; 27 T. L. R. 106 ; 55 Sol. Jo. 108—Warrington, J.]

II. **BY WAY OF EQUITABLE EXECUTION.**

See BANKRUPTCY, No. 11.

III. **IN GENERAL.**

2. *Practice—Appointment of Receiver by Chancery Division Pending Probate—Jurisdiction.*—The present practice is for the Chancery Division to entertain applications in administration actions by creditors for the appointment of a receiver pending the grant of probate or letters of administration.

IN RE WENGE, WALTER'S NON-INFLAMMABLE [CELLULITE, LD. *v.* WENGE, [1911] W. N. 129 ; 55 Sol. Jo. 553—Eve, J.

3. *Appointment by Court—Application ex parte.*—Except under extraordinary circumstances the Court ought not to appoint a receiver *ex parte*.

IN RE CONNOLLY BROTHERS, LD., WOOD *v.* [CONNOLLY BROTHERS, LD., [1911] 1 Ch. 731 ; 80 L. J. Ch. 409 ; 104 L. T. 693—C. A.

See S. C. COURTS, No. 3.

RECEIVING STOLEN GOODS.

See CRIMINAL LAW AND PROCEDURE.

RECOGNISANCES.

See CRIMINAL LAW AND PROCEDURE ; MAGISTRATES.

RECREATION GROUNDS.

See OPEN SPACES.

RECTIFICATION OF INSTRUMENTS.

See CONTRACTS ; DEEDS.

REFORMATORIES.

See PRISONS AND REFORMATORIES.

REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS.

See EXECUTORS AND ADMINISTRATORS ; HUSBAND AND WIFE ; INFANTS ; POOR LAW.

REGISTRATION OF LAND.

See REAL PROPERTY AND CHATTELS
REAL, III.

REGISTRATION OF VOTERS.

See ELECTIONS.

RELEASE.

See CONTRACT; LANDLORD AND TENANT;
MORTGAGE; POWERS; REAL PRO-
PERTY; TRUST.

REMAINDER.

See REAL PROPERTY AND CHATTELS
REAL: SETTLEMENTS.

REMOTENESS.

See PERPETUITIES.

RENT.

See LANDLORD AND TENANT.

RENT-CHARGES AND ANNUITIES.

	COL.
I. RENT-CHARGES	523
II. ANNUITIES	524

I. RENT-CHARGES.

See also LIMITATION OF ACTIONS, No. 2;
PERPETUITIES, No. 4.

1. *Mortgage of Land subject to Rent-charge—Mortgagee not taking Possession—Liability of Mortgagee for Rent-charge as Terre-tenant.*—The defendant was mortgagee of freehold land subject to a chief rent vested in the plaintiff. The mortgagor having made default in payment of the mortgage interest the defendant appointed a receiver under the Conveyancing Act, 1881. The plaintiff being unable to get the rent from the mortgagor, brought an action to recover it from the defendant, the mortgagee, as terre-tenant of the land.

HELD—that the defendant, being as mortgagee the legal owner of the land, and by the mortgagor's default entitled to take possession at any time he chose, was the terre-tenant and

liable for the rent, although he had never been in actual possession.

CUNDIFF *v.* FITZSIMMONS, [1911] 1 K. B. 513;
[80 L. J. K. B. 122; 103 L. T. 811—Div. Ct.]

II. ANNUITIES.

See also SETTLEMENTS, No. 3.

2. *Annual Payment Charged on Easements and Chattels—Realty or Personality.*—The tenant for life of one-eighth share in certain realty and personalty constituting the C. waterworks joined with the owners of the other seven shares in conveying such waterworks to a company incorporated by Act of Parliament, in consideration of an annual sum to be payable for ever to the grantors, their respective executors, administrators, and assigns, and there was a covenant by the company to pay such annual sum. The property granted consisted mainly of easements or rights in the nature of easements, and of personal chattels.

HELD—that such annual payment was personalty and not realty.

Decision of Parker, J. (103 L. T. 427; 27 T. L. R. 28) affirmed.

IN RE BAXTER'S TRUSTS, MALLING *v.* ADDISON,
[104 L. T. 710; 27 T. L. R. 425—C. A.]

REPAIRS AND IMPROVEMENTS.

See LANDLORD AND TENANT; SETTLEMENTS.

REPLEVIN.

See DISTRESS.

RES JUDICATA.

See ESTOPPEL.

RESPONDENTIA.

See SHIPPING AND NAVIGATION.

RESTITUTION OF PROPERTY.

See CRIMINAL LAW AND PROCEDURE;
PAWNBROKER.

RESTRAINT OF TRADE.

See TRADE AND TRADE UNIONS.

RESTRAINT ON ANTICIPATION.

See HUSBAND AND WIFE; TRUSTS.

RETAINER.

See BARRISTERS; EXECUTORS; SOLICITORS.

RETURNING OFFICER.

See ELECTIONS.

REVENUE.

I. EXCISE.	COL.
(a) Carriage Duty	525
(b) Dealer in Plate	527
(c) Male Servants	528
(d) Publican's Licence Duty	529
(e) Saccharin	529
[No paragraphs in this vol. of the Digest.]	
(f) Sale of Intoxicating Liquors	529
(g) Tobacco	530
[No paragraphs in this vol. of the Digest.]	
II. IN GENERAL	530
III. STAMP DUTIES.	
(a) Bond, Covenant, etc.	530
[No paragraphs in this vol. of the Digest.]	
(b) Conveyance or Transfer on Sale	530
(c) Capital of Companies	530
(d) Highway Agreements	531
[No paragraphs in this vol. of the Digest.]	
(e) Insurance Policies	531
(f) Marketable Security	532
(g) Mortgage	533
[No paragraphs in this vol. of the Digest.]	
(h) Proprietary and other Medicines	533
[No paragraphs in this vol. of the Digest.]	
(i) Receipt	533
[No paragraphs in this vol. of the Digest.]	
(k) Settlements	533
(l) Miscellaneous	534

See also CROWN PRACTICE, Nos. 1, 2;
DEATH DUTIES; DEPENDENCIES.
Nos. 3, 5; INCOME TAX; LAND TAX.

I. EXCISE.

(a) Carriage Duty.

1. "Carriage"—*Exemption—Milk Cart Used for Non-exempted Purpose Used by Servant without Knowledge of Owner—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3).*—The appellants were the owners and occupiers of, but did not reside on, a farm which

was managed for them by a bailiff under the superintendence of a steward who resided some considerable distance away. Part of the business of the farm was the conveyance of milk to a railway station, and for this purpose the appellants had a four-wheeled van which was usually driven to and from the station by a milkman. The van had the appellants' names painted on the side and was constructed for use for the conveyance of milk churns in the course of the appellants' business as dairy farmers. On one occasion, without the knowledge of the appellants or of the steward and for his own purposes, the bailiff used the milk van, after conveying milk to the station, for bringing back his wife and others from a place of entertainment. In respect of this user the appellants were convicted of keeping and using the milk van without having a licence therefor.

HELD—that the conviction was right inasmuch as the milk van was kept by the appellants, and they were responsible for the user by the bailiff of the van on the day in question, such user not being for the conveyance of goods or burden in the course of trade or husbandry within sect. 4, sub-sect. 3, of the Customs and Inland Revenue Act, 1888.

STRUTT v. CLIFT, [1911] 1 K. B. 1; 80 L. J. [K. B. 114; 103 L. T. 722; 74 J. P. 471; 27 T. L. R. 14; 8 L. G. R. 989—Div. Ct.]

2. *Exemption—Constructed or Adapted for Use—Capable of Being Used—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3).*—A vehicle does not cease to be within the exemption in sect. 4, sub-sect. 3, of the Customs and Inland Revenue Act, 1888, as being "constructed and adapted for use and used solely for the conveyance of any goods or burden in the course of trade or husbandry," merely because it can be used for other purposes.

The mere fact that persons are driven in a vehicle to market for the purpose of selling goods at such market, does not make the vehicle taxable, if otherwise exempt.

COOK v. HOBBS, [1911] 1 K. B. 14; 80 L. J. [K. B. 110; 103 L. T. 566; 75 J. P. 14; 9 L. G. R. 143—Div. Ct.]

3. *Exemption—Constructed or Adapted for Use—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3).*—The respondent kept a vehicle of the description known as a dogcart with four wheels. It had seating accommodation for four persons, and was fitted with rubber tyres and smart lamps. It was used by him for the purpose of his business—a shoe manufacturer's agent—to carry his samples. The interior fittings had been removed, steel plates had been put on the bottom and on the springs to strengthen the vehicle, and the two back seats removed to take seven specially made cases to carry the samples.

HELD—that there was evidence on which the magistrate could find that the vehicle was adapted for use solely for the conveyance of goods within sect. 4 of the Customs and Inland Revenue Act, 1888.

COLLMAN v. STOKES, 103 L. T. 592; 74 J. P. [473; 9 L. G. R. 156—Div. Ct.]

I. Excise—Continued.

4. *Hackney Carriage — What Constitutes "Keeping" a Carriage—Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 27.*—By sect. 27 of the Customs and Inland Revenue Act, 1869, "Every person who . . . shall keep a greater number of carriages . . . than he shall be authorised to . . . keep by any licence or licences" granted to him under that Act shall be liable to a penalty :—

HELD—that a cab proprietor who has in reserve in his yard a number of spare cabs ready for use and intended to be used if and when occasion requires does not "keep" them within the meaning of that section until he in fact begins to use them.

LONDON COUNTY COUNCIL *v.* FAIRBANK, [1911]
[2 K. B. 32; 80 L. J. K. B. 1032; 105 L. T. 46; 75 J. P. 356; 9 L. G. R. 540—Div. Ct.]

5. *Motor-car — Horse-power — Power Calculated According to Treasury Regulations Greater than Actual Horse-power — Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 86 (1) (2), Sched. 5 (2).*—By sect. 86, sub-sect. 1, of the Finance (1909-10) Act, 1910, the excise duty for carriages payable in respect of a motor-car shall be at the rates specified in Part 2 of the 5th Schedule to the Act, and by sub-sect. 2 the unit of horse-power for the purpose of any rate of duty in the 5th Schedule shall be calculated in accordance with regulations made by the Treasury for the purpose, and Part 2 of the 5th Schedule specifies the rates of duty on motor-cars according to the horse-power. The Treasury having made regulations under sub-sect. 2 of sect. 86 for calculating the horse-power :—

HELD—that those regulations are the only standard by which, for the purpose of the rate of duty, the horse-power of a motor-car is to be calculated, and that consequently, if the horse-power as so calculated is greater than the actual horse-power of the motor-car, the duty is payable on the greater horse-power as ascertained according to the regulations, although erroneous.

LONDON COUNTY COUNCIL *v.* TURNER, 105 L. T. [380; 75 J. P. 551; 9 L. G. R. 1155—Div. Ct.]

(b) Dealer in Plate.

6. *"Plate" — Assay—Hall Mark — Foreign Enamels on a Gold or Silver Base—Chain Watch-Bracelets — Plate (Offences) Act, 1738 (12 Geo. 2, c. 26), ss. 2, 6—Customs Act, 1842 (5 & 6 Vict. c. 47), s. 59—Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 10—Hall-Marking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6), s. 1.*—The word "plate," as used in sects. 2 and 6 of the Plate (Offences) Act, 1738, sect. 59 of the Customs Act, 1842, sect. 10 of the Revenue Act, 1883, and the Hall-marking of Foreign Plate Act, 1904, includes every article of gold or silver imported from abroad which, if it had been made in the United Kingdom, would have been subject to the provisions as to assaying and marking contained in the Act of 1738.

Where an article—such as a match-box, cigarette case, or letter clip—is once a "manufacture of gold or silver," within the meaning of that term as used in the Act of 1738, it does not cease to be such because it is used as the base or foundation of enamel work, however great the artistic merit of that work is as compared with the value of the gold or silver.

Enamel worked on a gold or silver foundation—even if it is a jewel—is not "set" in the gold or silver within the meaning of that word as used in sect. 2 of the Act of 1738.

An enamelled gold cigarette case, the enamel of which is worked on the gold foundation (even if an enamel is a "jewel"), is not "set" in the gold within the meaning of that word as used in sect. 6 of the Act of 1738.

Gold watches which are jewelled and set in gold chain bracelets are not exempt from being hall-marked.

FABERGÉ *v.* GOLDSMITHS' Co., [1911] 1 Ch. [286; 80 L. J. Ch. 97; 103 L. T. 555—Parker, J.]

(c) Male Servants.

7. *Jobbing Gardener—Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19.*—The respondent employed A. as a jobbing gardener for four days a week. A. was at liberty to work for another employer in the same capacity on those days that he was not employed by the respondent, and he was entitled to send a qualified substitute to do the respondent's work when he was unable to attend himself. A. worked greenhouses of his own, and frequently supplied the respondent with plants from them.

HELD—that A. was not a "male servant" within the meaning of sect. 19 (3) of the Revenue Act, 1869.

BRADDELL *v.* BAKER, 104 L. T. 673; 75 J. P. [185; 27 T. L. R. 182; 9 L. G. R. 245—Div. Ct.]

8. *Cooks in Club—Club Subsidised by Government—Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 10.*—Male cooks were employed in a club for civil servants which was managed by a committee of the members. The expenses of the club were partially defrayed by an annual grant by the Government.

HELD—that the cooks were not in the service of the Crown, but were in the service of the committee of the club, and that they were "male servants" within sect. 10 of the Revenue Act, 1869, for whom licences had to be taken out.

LONDON COUNTY COUNCIL *v.* HOUNDLE, 105 L. T. 211; 75 J. P. 442; 27 T. L. R. 465; 9 L. G. R. 958—Div. Ct.]

9. *Gardener—Taxable Persons—Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 27, 19 (3)—Revenue Act, 1876 (39 Vict. c. 16), s. 5.*—Sect. 5 of the Inland Revenue Act, 1876, which enacts that a servant employed in certain capacities shall not be deemed to be otherwise employed because he is occasionally or partially employed to do something else, only applies to a person who is not taxable, but who happens to do duties which, if they

I. Excise—Continued.

were his ordinary duties, would render him taxable.

DUKE OF BEDFORD v. LONDON COUNTY COUNCIL,
[104 L. T. 889; 75 J. P. 317; 55 Sol. Jo.
423; 9 L. G. R. 617—Div. Ct.]

(d) Publican's Licence Duty.

See also **RATES**, Nos. 2, 11.

10. Annual Value of Premises—Basis of Valuation—Metropolis—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67) ss. 45, 47—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 44 (1).]

HELD—that sect. 44, sub-sect. 1, of the Finance (1909-10) Act, 1910, which declared that in the determination of the annual value for the purposes of the excise licence duty "the duty on the licence was not to be allowed as a deduction," had altered the method of calculation of annual value of licensed premises in the metropolis, and that the basis of valuation under the Valuation (Metropolis) Act, 1869, was no longer applicable.

[The above-mentioned sub-section was repealed by the Revenue Act, 1911 (1 Geo. 5, c. 2), s. 20, (1), Sched., and s. 8 (1), (2) of that Act was substituted for it.]

WRIGGLESWORTH v. R., [1911] W. N. 7; 104
[L. T. 593; 75 J. P. 118; 27 T. L. R. 154;
9 L. G. R. 329—Channell, J.]

(e) Saccharin.

[No paragraphs in this vol. of the Digest.]

(f) Sale of Intoxicating Liquors.

11. "Beer"—Sale by Retail without Excise Licence—Liquor Manufactured from Glucose and Hops—Liquor containing 2 per cent. of Proof Spirit—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 50, 52.]—The appellant was summoned under sect. 50, sub-sect. 3, of the Finance (1909-10) Act, 1910, for having sold by retail beer, for the retail sale of which he was required to take out a licence under that Act, without having taken out such licence. On the premises where the liquor was sold there were exhibited the following advertisements:—"The ales and stouts which are offered to the public on these premises are manufactured at about the same strength as ordinary ales and stouts, guaranteed free from chemicals, and to contain no preservatives"; "Finlay's ales and stouts brewed from the best malt and Kent and Worcester hops. Ale 1½d. per pint, stout 2d. per pint, to be consumed on or off the premises." On analysis the liquor in question had the ordinary gravity of beer and contained 2 per cent. of proof spirit. It was manufactured from liquid glucose and hops, and was fermented with yeast. In colour and appearance it was exactly like ordinary beer. The justices were of opinion that the liquor so sold was "beer" within sect. 52 of the Finance (1909-10) Act, 1910; that the clause in that section defining "beer" could be subdivided; and that it was necessary to have an excise licence for the sale of such liquor. They accordingly convicted the appellant.

HELD—that the justices had properly construed the clause in sect. 52 defining "beer," and that they were entitled to hold on the evidence before them that the liquor sold by the appellant was "beer" within that section.

FAIRHURST v. PRICE, 28 T. L. R. 132—Div. Ct.

(g) Tobacco.

[No paragraphs in this vol. of the Digest.]

II. IN GENERAL.

12. Fine—Rights of Corporation under Charter—Rights of Crown Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 33.]—Sect. 33, sub-sect. 1, of the Inland Revenue Regulation Act, 1890, provides that "all fines, penalties, and forfeitures incurred under any Act relating to Inland Revenue, which are not otherwise legally appropriated, shall be applied to the use of her Majesty."

HELD—that this section excludes any right a municipal corporation might otherwise have under its old charters to receive fines in Revenue prosecutions.

ATTORNEY-GENERAL v. EXETER CORPORATION,
[1911] 1 K. B. 1092; 80 L. J. K. B. 636; 104
L. T. 212; 75 J. P. 280; 27 T. L. R. 249—
Hamilton, J.]

III. STAMP DUTIES.

See also **DEPENDENCIES**, No. 4.

(a) Bond, Covenant, etc.

[No paragraphs in this vol. of the Digest.]

(b) Conveyance or Transfer on Sale.

13. Voluntary Disposition—Stamp Duty not Paid on Value—Subsequent Purchaser—Title—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (1), (5).]—When property has been conveyed for a consideration less than its full value, the fact that stamp duty has only been paid in respect of the consideration mentioned in the conveyance, and not (as required by sect. 74 of the Finance Act, 1910) in respect of the value of the property, will not affect a subsequent purchaser for value.

IN RE WEIR AND PITT'S CONTRACT, 55 Sol. Jo.
[536—Warrington, J.]

(c) Capital of Companies.

14. Increase of Nominal Share Capital—Power of Shareholder to have Stock Converted into other Stock of Double Nominal Value—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 113.]—By the Caledonian Railway Co.'s private Act, 1890, a holder of the ordinary stock of that railway could require the company to convert the whole or any part of such stock and to issue to him an amount of preferred and deferred converted ordinary stock each equal to the amount of ordinary stock so converted. By the Caledonian Railway Act, 1898, the Act of 1890 was made to apply to all the ordinary stock of the company issued under any past or future Act of Parliament. By the Caledonian Railway Act, 1899, the company was authorised to raise £906,000

III. Stamp Duties—Continued.

additional capital by the issue at their option of new ordinary shares or stock, or new preference shares or stock. The railway company delivered the statement required by sect. 113 of the Stamp Act, 1891, as to £906,000, but the Crown claimed that as this could, under the provisions of the company's private Acts, be converted into stock or shares of the nominal value of £1,812,000, the latter was the amount of nominal capital authorised, and that, consequently, stamp duty was payable on that amount.

HELD—that £1,812,000 was the increased amount of the nominal share capital authorised within the meaning of sect. 113 of the Stamp Act, 1891, and that stamp duty was payable on that basis.

Decision of *Bray, J.* (102 L. T. 358; 26 T. L. R. 343) affirmed.

ATTORNEY-GENERAL *v.* CALEDONIAN RY. CO., [105 L. T. 184; 27 T. L. R. 559—C. A.]

(d) Highway Agreements.

[No paragraphs in this vol. of the Digest.]

(e) Insurance Policies.

15. *Marine Insurance—Open Cover—Verbal Agreement—Referring Question of Underwriter's Liability—Stamp—Stamp Act, 1891* (54 & 55 Vict. c. 39), ss. 91—93, 97. [—The plaintiffs, having effected a reinsurance contract by way of open cover with the defendant, put forward a policy upon certain cargo in respect of a loss for which the plaintiffs had become liable to pay £230 on their original insurance. The defendant having refused to sign the policy upon the ground that the plaintiffs had failed to make all the declarations that ought properly to have been made by them under their cover, it was verbally agreed between the parties that a person should be nominated to certify whether all the declarations had or had not been made by the plaintiffs, and if the person so nominated certified that all the declarations had been made by the plaintiffs, the defendant was to sign the policy and pay the loss. The person to whom the reference was made certified that all the declarations had been made, whereupon, as the defendant still refused to sign the policy, the plaintiffs sued him to recover £230 as damages for breach of the verbal agreement.]

HELD—that the action was not maintainable, (1.) because if the defendant paid the £230 he would be paying a sum of money upon a loss relative to sea insurance, which insurance was not expressed in a policy of sea insurance duly stamped, and the defendant would, therefore, be liable to a penalty under sect. 97 of the Stamp Act, 1891; and (2.) because the verbal agreement was a contract for sea insurance, and, not being expressed in a policy of sea insurance, was invalid under sect. 93 of the Stamp Act, 1891.

Hyams v. Stuart King ([1908] 2 K. B. 696) distinguished.

HELD, ALSO—that in the circumstances the defendant was not entitled to an order for the

payment by the plaintiffs of the defendant's costs of the action.

GENFORSIKRINGS AKTIESELSKABET (SKAN-
[DINAVIA REINSURANCE CO. OF COPEN-
HAGEN] *v.* DA COSTA, [1911] 1 K. B. 137;
80 L. J. K. B. 236; 103 L. T. 767; 27 T. L. R.
43; 16 Com. Cas. 1; 11 Asp. M. C. 548—
Hamilton, J.]

(f) Marketable Security.

16. *Debentures Purporting to Create Charge on Ships—Previous Mortgage of Ships to Trustees for Debenture-holders—Deed of Covenants with Trustees for Payment of Sums secured by Debentures—Liability of Debentures to Stamp Duty—Instrument for Disposition of Interest or Property in Ship—Stamp Act, 1891* (54 & 55 Vict. c. 39), First Schedule, "Marketable Security," "General Exemptions from all Stamp Duties," Clause 2. [—A company incorporated under the Companies Acts, 1862 to 1888, issued a debenture for £1,000 and interest thereon, which was a marketable security within the meaning of the First Schedule to the Stamp Act, 1891. The debenture was one of a series issued by the company for securing an aggregate amount not exceeding £20,000. It contained a covenant by the company with the registered holder for the time being to pay the £1,000 and interest. Then followed words whereby the company purported to charge with the payment of the £1,000 and interest three steamships, and a proviso entitling the company to the use and employment of the steamships in the usual course of their business until default were made in payment of the principal money or interest secured by the debenture, whereupon the debenture was to be immediately enforceable, with a limitation that the liberty to use and employ the steamships was not to be held to authorise the creation of any mortgage or charge of or upon the steamships or any part or share thereof having priority over the charge purported to be created by the debenture. The debenture also contained a declaration that it was subject to and with the benefit of the conditions indorsed thereon. Those conditions provided, *inter alia*, that the series of debentures so issued should rank *pari passu*, without any preference or priority of one debenture over another, as a first charge on the steamships; that warrants for the payment of interest should be sent by post to the registered holders of the debentures; and that a register of debentures for the entry of transfers on the register free from equities should be kept. By the conditions it was also declared that "the holders for the time being of this debenture and the other debentures of this issue (in addition to the charge hereby respectively created) shall be entitled *pari passu* to the benefit of a deed of covenants, dated December 22nd, 1909, . . . and three several mortgages of even date therewith." The three mortgages of December 22nd, 1909, were respectively mortgages of the three steamships and were in the form contained in Part I. of the First Schedule to the Merchant Shipping Act, 1894, and the deed of covenants of even date recited these mortgages (which were granted

III. Stamp Duties—Continued.

by the company to certain trustees for the debenture-holders) and contained covenants by the company with those trustees with regard to the payment of the principal money and interest intended to be secured by the debentures, and other covenants and provisions for the maintenance of the security and for its realisation in case of default:—

HELD—that the debenture did not create any charge beyond that which was already in existence under the mortgages and deed of covenants; that if it did create any charge its substantial object was to create not a charge but a marketable security; that it was therefore not an instrument for the disposition of an interest in a ship within the meaning of clause 2 of the “General Exemptions from all Stamp Duties” contained in the First Schedule to the Stamp Act, 1891; and that consequently it was liable to stamp duty as a marketable security under the same schedule.

Decision of Hamilton, J. ([1911] 1 K. B. 1078; 80 L. J. K. B. 761; 104 L. T. 602) affirmed.

DEDDINGTON STEAMSHIP CO. v. INLAND
[REVENUE COMMISSIONERS, [1911] 2 K. B.
1001; 81 L. J. K. B. 75; 105 L. T. 482—
C. A.]

(g) Mortgage.

[No paragraphs in this vol. of the Digest.]

(h) Proprietary and Other Medicines.

[No paragraphs in this vol. of the Digest.]

(i) Receipt.

[No paragraphs in this vol. of the Digest.]

(k) Settlements.

17. *Settlement—Resettlement—Policies—Duty Payable—Provision for Keeping up Policies—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 104.*

—Where money to become due or payable under a policy of life insurance was “settled” by an instrument dated in 1894, which contained no provision for keeping up the policy, but the policy was in fact protected by a covenant, still applicable, for the payment of the premiums, such covenant being contained in a previous instrument executed when the policy was effected in 1892:—

HELD—that provision was “made for keeping up the policy” within the meaning of the proviso 2 (a) to sect. 104 of the Stamp Act, 1891, and that, for the purpose of stamping the instrument of 1894, the *ad valorem* duty was chargeable in respect of the full amount of the policy moneys, and not only on the value of the policy at the date of the instrument.

It is not necessary for the purpose of the sub-section that the provision should be contained in the particular instrument which is sought to be charged with duty.

Decision of Hamilton, J. on this point ([1911] 2 K. B. 343; 80 L. J. K. B. 866; 104 L. T. 506) reversed.

DUKE OF NORTHUMBERLAND v. INLAND RE-
[VENUE COMMISSIONERS, [1911] 2 K. B.
1011; 105 L. T. 485—C. A.]

(1) Miscellaneous.

18. *Lease for Ninety-Nine Years if A., B., or C. Shall so Long Live—Indefinite Term Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.*—A lease for the term of ninety-nine years if A., B., and C., or any one of them, shall so long happen to live, with a perpetual right of renewal, is not a lease for an indefinite term, but is rightly stamped as a lease for ninety-nine years, under column 2 of the scale provided under “Lease or Tack,” sub-head 3 of Schedule I. to the Stamp Act, 1891.

EARL OF MOUNT-EDGUMBE v. INLAND
[REVENUE COMMISSIONERS, [1911] 2 K. B.
24; 80 L. J. K. B. 503; 105 L. T. 62; 27
T. L. R. 298—Hamilton, J.]

REVERSIONS AND REMAINDERS.

See PERSONAL PROPERTY; REAL PROPERTY AND CHATTELS REAL.

REVISING BARRISTER.

See ELECTIONS.

RIGHT OF WAY.

See EASEMENTS; HIGHWAYS.

RIOT.

See CRIMINAL LAW AND PROCEDURE.

RIPARIAN OWNERS AND RIGHTS.

See FISHERIES; WATERS AND WATER-COURSES.

RIVERS.

See FISHERIES; WATERS AND WATER-COURSES.

ROADS.

See HIGHWAYS, STREETS, AND BRIDGES.

ROBBERY.

See CRIMINAL LAW AND PROCEDURE.

ROYAL FORCES.

See also MASTER AND SERVANT, No. 20.

1. *Rateability—Premises Acquired by County Association for Purposes of Territorial Forces—Premises Occupied by Officer for Purposes of his Duties—Territorial and Reserve Forces Act, 1907 (7 Edw. 7. c. 9). ss. 1—4.*—Premises *bona fide* acquired by a county association under the Territorial and Reserve Forces Act, 1907, for the purposes of the Territorial Forces, are premises acquired by the Crown for Crown purposes, and as long as an officer, by arrangement with the county association, resides therein for the purpose of his duties under the Act of 1907, such premises are, as being used for Crown purposes, exempt from rating. Where, in such circumstances, the name of the officer in occupation of the premises has in fact been inserted in the rate-book, the objection that he is not liable to be rated may be taken before the justices on an application for a distress warrant.

WIXON *v.* THOMAS, LAMBERT *v.* THOMAS, BURROWS *v.* THOMAS, [1911] 1 K. B. 43; 80 L. J. K. B. 104; 103 L. T. 731; 75 J. P. 58; 27 T. L. R. 35; 8 L. G. R. 1042—Div. Ct.

SALE OF GOODS.

	COL.
I. ACCEPTANCE	535
II. CONDITIONS	536
III. CONSTRUCTION	536
IV. DAMAGES	536
V. FORMATION OF CONTRACT	537
VI. MISCELLANEOUS	537
VII. NOTE OR MEMORANDUM	538
VIII. PART PAYMENT	538
[No paragraphs in this vol. of the Digest.]	
IX. PASSING OF PROPERTY IN GOODS	538
X. PASSING OF TITLE TO GOODS	539
XI. SALE OF BUSINESS	539
XII. SALE BY SAMPLE	539
[No paragraphs in this vol. of the Digest.]	
XIII. STOPPAGE IN TRANSITU	539
XIV. WARRANTY	539

See also AGENCY, Nos. 2, 3; DISCOVERY, No. 3; INSURANCE, No. 23.

I. ACCEPTANCE.

1. *Implied Condition—“Merchantable Quality”—Form of Contract—“Delivery as Required”—Power to Sever—Acceptance of First Consignment—Part of Later Consignment Defective—Right to Return Whole Consignment—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 14.*—The defendants, who were dealers in motor accessories, ordered a large number of motor horns of the plaintiff, who manufactured them, the order providing for “delivery as required.” They were delivered by carriers nominated by

the defendants in nineteen cases during May and June, 1909, and in the latter month the defendants inspected them and rejected all, except the first instalment, on the ground that a great proportion of the horns were unsaleable on account of being dented and of faulty manufacture. An action to recover the price of the goods was referred to an official referee, who found that many of the horns had sustained injury owing to insufficient packing; that some were defective through careless work; and that some required polishing and other work to make them merchantable; but as the injured or defective horns could have been made merchantable at a very slight cost, he declined to find that the goods as an entire consignment were unmerchantable, and, subject to an allowance in respect of the injuries and defects above mentioned, he gave judgment for the plaintiff with costs.

HELD—that the terms of the order showed that it was contemplated that the goods should not all be delivered at one time, but from time to time, and that, therefore, the acceptance of a prior instalment was not a bar to the rejection of the remainder; that, subject to the rule *de minimis*, the vendor must prove that he had delivered or tendered all the goods in a merchantable condition; and that, although a large proportion of the goods in dispute were in a merchantable condition, the defendants had a right to reject the whole of them.

Tarling v. O’Riordan ((1878) 2 L. R. Ir. 82) approved.

Decision of Div. Ct. reversed.

JACKSON *v.* ROTAX MOTOR AND CYCLE CO., [1910] 2 K. B. 937; 80 L. J. K. B. 38; 103 L. T. 411—C. A.

II. CONDITIONS.

See also No. 1, *supra*.

2. *Shipment to be Made, and Bill of Lading to be Dated during December or January—Stipulation as to Date of Bill of Lading.*—A contract for the sale of beans, made in the form adopted by the London Corn Trade Association, contained the clause, “Shipment made or to be made, and bill or bills of lading dated or to be dated during December, 1909, and/or January, 1910.” It also contained the clause: “Bill of lading to be considered proof of date of shipment in the absence of evidence to the contrary.”

HELD—that the stipulation that the bills of lading were to be dated during December, 1909, and/or January, 1910, was a condition of the contract, and therefore that the buyers were entitled to reject the beans where they were shipped in January, 1910, but the bill of lading tendered was dated February, 1910.

IN RE GENERAL TRADING CO., LD., AND VAN [STOLK’S COMMISSIEHANDEL, 16 Com. Cas. 95—Lawrence, J.

III. CONSTRUCTION.

See No. 1, *supra*.

IV. DAMAGES.

See DAMAGES, No. 1.

V. FORMATION OF CONTRACT.

3. *Goods Exceeding £10 in Value—Hayrick—Constructive Delivery and Receipt—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4.*—The plaintiff agreed to buy from the defendant, a farmer, a standing hayrick for £100. The plaintiff was to send his men to tie and press the hay, and the defendant was to cart it to the nearest railway station. Before the plaintiff had sent to cut the hay, the defendant sent him a telegram saying "Don't send press. Am writing," and a letter asking him to give up possession of the hay. The plaintiff declined to do so, and the defendant refused to let the plaintiff have the hay.

HELD—that the contract was one to which the principle of constructive delivery and receipt was applicable, and that the telegram and letter of the defendant constituted evidence of such constructive delivery and receipt, and the plaintiff accordingly was entitled to damages for breach of contract.

NICHOLLS v. WHITE, 103 L. T. 800—Div. Ct.

VI. MISCELLANEOUS.

4. *Market Overt—Custom of City of London—Sale in Auction Room.*—It is a question of fact in each case whether premises in which goods are sold constitute a "shop" within the custom of market overt in the City of London.

A watch was sold in an auction room which was on the first floor of a building in the City of London. In the auction room sales, largely of unredeemed pledges, were periodically held.

HELD, on the facts—that the auction room was not a "shop" within the meaning of the custom of the City of London, and that the sale of the watch there was not a sale in market overt.

CLAYTON v. LE ROY, [1911] 2 K. B. 1031; 81 [L. J. K. B. 49; 104 L. T. 419; 75 J. P. 229; 27 T. L. R. 206—Scrutton, J.

ON APPEAL, Held (Vaughan Williams, L.J., dissenting), without deciding the question of market overt—that on the facts there had been no conversion of the watch by the defendants at the time the writ was issued and therefore that on that ground an action for wrongful detention of the watch failed: [1911] 2 K. B. 1031, 1046; 81 L. J. K. B. 49, 58; 105 L. T. 430; 75 J. P. 521; 27 T. L. R. 479—C. A.

See S. C. under TROVER AND CONVERSION.

5. *Unpaid Seller's Right of Lien—Assent to Subsale—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 29, 41, 47.*—The plaintiffs, through one T., who was acting for them in the matter, bought three old boilers which belonged to and were in the possession of a paper company. While the boilers still remained on the premises of the paper company T. sold them to H. for £60, on the terms that £20 should be paid before the removal of the first boiler, and the balance of £40 by December, 1909; and in October, 1909, T., by letter, informed the paper company of the sale to H. Subsequently H. sold the boilers, which still

physically were in the paper company's possession, to the defendants and paid £10 on account to T., but paid no more. There was no acknowledgment by the paper company to H. that they held the boilers on his behalf.

HELD—that the plaintiffs were not precluded from setting up their right of lien as unpaid sellers by the fact that they had through T. informed the paper company of the sale to H.

Decision of Channell, J. (27 T. L. R. 38) affirmed.

POULTON & SON v. ANGLO-AMERICAN OIL CO., [Ld., 27 T. L. R. 216—C. A.

VII. NOTE OR MEMORANDUM.

6. *Contract not to be Performed within a Year—Necessity for Memorandum or Note in Writing—Statute of Frauds (29 Car. 2, c. 3), s. 4.*—Sect. 4 of the Statute of Frauds applies to a contract for the sale of goods which is not to be performed within the space of one year from the making thereof. Such a contract is therefore unenforceable unless there is some memorandum or note thereof in writing signed by the party to be charged therewith, or by some person authorised by him.

Decision of Walton, J. ([1910] 2 K. B. 776; 79 L. J. K. B. 1143; 103 L. T. 223; 26 T. L. R. 644; 54 Sol. Jo. 750) affirmed.

PRESTED MINERS GAS INDICATING ELECTRIC [LAMP CO., LD. v. HENRY GARNER, LD., [1911] 1 K. B. 425; 80 L. J. K. B. 819; 103 L. T. 750; 27 T. L. R. 139—C. A.

VIII. PART PAYMENT.

[No paragraphs in this vol. of the Digest.]

IX. PASSING OF PROPERTY IN GOODS.

See also MISREPRESENTATION, No. 1; SHIPPING, No. 17.

7. *C.I.F. Contract—“Terms Net Cash”—Payment—Tender of Shipping Documents—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 28, 32, 34.*—Where goods are sold under a c.i.f. contract, containing the words "terms net cash," the buyer is bound, in the absence of any stipulation to the contrary, to pay the price of the goods on tender to him of the shipping documents, although at the date of such tender the goods have not arrived.

Decision of C. A. ([1911] 1 K. B. 934; 80 L. J. K. B. 584; 104 L. T. 577; 27 T. L. R. 331; 55 Sol. Jo. 383; 16 Com. Cas. 197) reversed.

E. CLEMENS HORST CO. v. BIDEELL BROTHERS, [1911] W. N. 211; 81 L. J. K. B. 42; 105 L. T. 563; 28 T. L. R. 42; 56 Sol. Jo. 50—H. L.

8. *Goods sent on Approval—Refusal to give Seller's Price—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 18 (4) (b).*—A delivery of goods on approval is determined by rejection within sect. 18, sub-sect. 4 (b), of the Sale of Goods Act, 1893, when the person to whom they are sent says that he will not give the price asked by the seller.

BRADLEY AND COHN, LD. v. RAMSEY & CO., [28 T. L. R. 13—Phillimore, J.

X. PASSING OF TITLE TO GOODS.

See SHIPPING, No. 17.

XI. SALE OF BUSINESS.

See LANDLORD AND TENANT, No. 8.

XII. SALE BY SAMPLE.

[No paragraphs in this vol. of the Digest.]

XIII. STOPPAGE IN TRANSITU.

9. *Duration of Transit—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 45, sub-ss. 1, 2, 3, 7.*—An engineering company built two lifeboats to the order of a shipowning company. Under the contract the place of delivery was the buyers' yard, and the whole cost of transit thereto fell to be borne by the sellers. The boats were handed over by the sellers to a railway company for the purpose of carriage to the place of delivery, but they were consigned at a rate which only covered the cost of carriage from station to station. On the arrival of the boats at the station to which goods destined to the buyers were usually consigned, on February 8th, 1910, the railway company's foreman informed the foreman of certain carting contractors that he would be ready to deliver them on February 10th. The carting contractors were independent contractors, who were accustomed to cart to the buyers' yard goods arriving for them, and on February 10th they removed one of the boats from the station and delivered it to the buyers. Before the carting contractors got delivery of the other boat the railway company received notice from the sellers to stop delivery of the boats in respect that the buyers had suspended payment. The sellers subsequently requested re-delivery of the boat from the railway company, but they on March 6th delivered it to the buyers. The sellers did not receive payment therefor.

HELD—that the boat had not been delivered before the notice of stoppage *in transitu* had been received, and that the railway company were liable in damages.

MECHAN & SONS, LD. v. NORTH EASTERN RY.
[Co., 48 Sc. L. R. 987—Ct. of Sess.]

XIV. WARRANTY.

10. *Goods not According to Contract—Sale of Seed—Conditions of Sale—Non-Warranty Clause in Sold Note.*—The appellants bought from the respondents a quantity of seed by sample which was represented to be common English sainfoin, and the respondents thereupon handed to the appellants a sold note in the following terms:—"Sold to [the appellants] on the conditions printed on the back, abt. 27½ quarters sainfoin 40s. × Walker (common English) × Alvescot. . . ." On the back was the following condition printed:—"Sellers give no warranty express or implied as to the growth, description, or any other matters, and they shall not be held to guarantee or warrant the fitness for any particular purpose of any grain, seed, flour, cake, or other article sold by

them, or its freedom from injurious quality or from latent defect." The seed was delivered in due course, and was equal to sample. A portion of the seed was resold by the appellants as common English sainfoin. Neither the sample nor the bulk was common English sainfoin, but was giant sainfoin, the two seeds being indistinguishable. When the difference was subsequently discovered by the appellants' purchaser he claimed damages from them for breach of warranty, which claim was reasonably and properly settled by the appellants, after notice to the respondents, for £14. The appellants therefore claimed to recover this sum from the respondents.

HELD—that they were entitled to recover.

Decision of C. A. ([1910] 2 K. B. 1003; 79 L. J. K. B. 1013; 103 L. T. 118; 26 T. L. R. 572) reversed.

WALLIS, SON, AND WELLS v. PRATT AND [HAYNES, [1911] A. C. 394; 80 L. J. K. B. 1058; 105 L. T. 146; 27 T. L. R. 431; 55 Sol. Jo. 496—H. L.]

SALE OF LAND.

	COL.
I. ABSTRACT OF TITLE	510
[No paragraphs in this vol. of the Digest.]	
II. BUILDING ESTATE	540
[No paragraphs in this vol. of the Digest.]	
III. CONDITIONS AND PARTICULARS OF SALE	540
IV. CONTRACT	541
V. CONVEYANCE	542
[No paragraphs in this vol. of the Digest.]	
VI. LEASEHOLDS	542
VII. MISCELLANEOUS	542
[No paragraphs in this vol. of the Digest.]	
VIII. PARCELS	542
IX. PARTIES	543
[No paragraphs in this vol. of the Digest.]	
X. PRACTICE	543
XI. RESTRICTIVE COVENANTS	543
XII. TITLE	543
XIII. TITLE DEEDS	544
[No paragraphs in this vol. of the Digest.]	

See also AGENCY, No. 6; EASEMENTS; EXECUTORS, No. 24; REVENUE, No. 13; SPECIFIC PERFORMANCE.

I. ABSTRACT OF TITLE.

[No paragraphs in this vol. of the Digest.]

II. BUILDING ESTATE.

[No paragraphs in this vol. of the Digest.]

III. CONDITIONS AND PARTICULARS OF SALE.

1. *Terms of Existing Tenancy—Compensation for Unexhausted Improvements—Notice—Agri-*

III. Conditions and Particulars of Sale—*Continued.*

cultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 2.]—Where, in a contract for the sale of land, the conditions of sale provide that the purchaser shall take subject to all the terms of existing tenancies, on completion of the sale the purchaser will be deemed to have notice of a tenant's claim to compensation for unexhausted improvements arising under the terms of his lease and will be liable for the payment thereof.

A purchaser is deemed to have notice of a tenant's claim to compensation under the *Agricultural Holdings Act, 1908*.

IN RE LORD DERBY'S CONTRACT, FERGUSON v. [LORD DERBY, 56 Sol. Jo. 71—Joyce, J.]

2. *Particulars of Sale, whether Misleading.—Sub-lease—Notice.*—The advertisement of an intended sale of a public-house described it as in the occupation of a tenant at a yearly rent, but did not specify the tenure by which the tenant held. An intending purchaser having seen the advertisement made an offer which was accepted, subject to conditions of sale, an agreement incorporating which she signed, and which stated explicitly that the tenant of the public-house held under a lease which had ten years to run. There was a conflict of evidence as to whether the intending purchaser understood before signing the agreement that this lease was outstanding, and she sought to repudiate the purchase on the ground that she was misled by the advertisement into supposing that there was a yearly tenant in occupation of the public-house. In an action by the vendor for the deposit, fraud was not pleaded or alleged, but the jury found in answer to questions put to them that the purchaser was misled by the advertisement, and did not understand when signing the agreement that there was the lease of the public-house outstanding.

HELD—that there was no question for the jury, and that a verdict should have been directed for the plaintiff; that the advertisement was not misleading; and that, applying the principle of *Carroll v. Keayes* (1 R. 8 Eq. 97), it was sufficient to put the purchaser on inquiry as to the tenure under which the occupier held; and that in the absence of fraud she was bound by the agreement which she signed specifying the actual tenure. CLEMENTS v. CONROY, [1911] 2 I. R. 500—[C. A., Ireland.]

See also No. 7, *infra*.

IV. CONTRACT.

3. *Letters—Reference to a Formal Contract—Specific Performance—Complete Open Contract.*—Where the agents for the vendor of two warehouses, in a letter accepting an offer by intending purchasers, wrote as follows: "We shall be glad to meet you at your early convenience to receive a deposit on the sale to you, and to arrange for a formal contract, to be drawn out for signature by the solicitors"—

HELD—that this was not a conditional acceptance, but a letter completing an open contract, of which specific performance could be enforced as against the purchaser.

ROUSE v. GINSBERG, 55 Sol. Jo. 632—Eady, J.

4. *Deposit—No Clause Forfeiting Deposit—Default by Purchaser—Rescission of Contract—Deposit Claimed by Vendor.*—On signing the contract for sale the purchaser paid a deposit to the vendor's solicitors. The contract did not contain a clause forfeiting the deposit if the purchaser made default in completing. The purchaser did not complete, and the vendor obtained judgment for specific performance. The vendor now moved that the contract might be rescinded and for a declaration that he was entitled to the deposit.

HELD—that the vendor was entitled to the order asked for.

HELD, ALSO—that the fact that the deposit was in the hands of stakeholders did not affect the respective rights of the vendor and purchaser.

Howe v. Smith ((1884) 27 Ch. D. 89) followed; *Jackson v. De Kadiach* ([1904] W. N. 168) considered.

HALL v. BURNELL, [1911] 2 Ch. 551; 105 [L. T. 409; 55 Sol. Jo. 737—Eve, J.]

5. *Specific Performance—Agreement for Sale of a Lease—Conditions.*—By certain letters the plaintiff offered to purchase certain leasehold premises, the offer being subject to the conditions that the plaintiff's solicitors should approve the title to and covenants contained in the lease, the title from the freeholder, and the form of contract, and that the plaintiff should approve her surveyor's report, and this offer was accepted by the defendant, the vendor. On receipt of her surveyor's report, the plaintiff endeavoured to obtain a contribution from the defendant towards some improvement recommended by the surveyor, whereupon the defendant withdrew. The plaintiff sought specific performance.

HELD, that there was no final agreement of which specific performance could be enforced against the defendant.

Winn v. Bull ((1877) 7 Ch. D. 29) followed.

HATZFELDT v. ALEXANDER, 105 L. T. 434—[Parker, J.]

V. CONVEYANCE.

[No paragraphs in this vol. of the Digest.]

VI. LEASEHOLDS.

See MORTGAGE, No. 5.

VII. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

VIII. PARCELS.

6. *Sale by Plan—Concluded Contract—Evidence—Scottish Law.*—All that passed, either oral or in writing, in the negotiations leading up to a completed contract of sale of heritable

VIII. Parcels—Continued.

property is admissible in evidence to prove what was the subject of the sale, not to alter the contract, but to identify the subject.

The meaning of a descriptive name in a particular contract cannot be determined by a fixed rule of law without regard to the facts of the case.

HELD, on the evidence—that an estate was sold according to plan, and that the purchaser could not obtain a larger estate than that shown on the plan on the ground that particulars given and taken as being particulars of what was contained in the plan were inconsistent with the plan.

GORDON-CUMMING v. HOULDSWORTH, [1910] A. C. 537; 80 L. J. P. C. 47; [1910] S. C. (H. L.) 49; 47 Sc. L. R. 761—H. L. (Sc.)

IX. PARTIES.

[No paragraphs in this vol. of the Digest.]

X. PRACTICE.

See also **SPECIFIC PERFORMANCE**.

7. Action on Contract—No Question of Title—Specific Performance—Costs.—Where a decree for specific performance, with inquiry as to title, is granted in an action in which questions of contract only, and not of title, are raised, the purchaser will be ordered to pay the costs of the action and inquiry upon title being shown.

BANFIELD v. PICARD, 55 Sol. Jo. 649—Joyce, J.

XI. RESTRICTIVE COVENANTS.

8. Purchaser for Value without Notice—Subsequent Purchase with Notice—Constructive Notice.—The purchaser of land from one who has purchased it for value, without notice, either actual or constructive, of a restrictive covenant is not bound by the covenant, although he himself had notice of it.

WILKES v. SPOONER, [1911] 2 K. B. 473; 80 [L. J. K. B. 1107; 104 L. T. 911; 27 T. L. R. 426; 55 Sol. Jo. 429—C. A.]

See S. C. under **LANDLORD AND TENANT**, No. 8.

XII. TITLE.

See also **SETTLEMENTS**, No. 2.

9. Failure to Show Title—Latent Defect—Underground Culvert for Water of a Natural Watercourse—Specific Performance—Compensation.—An underground watercourse, though proved to be a latent defect, will not entitle the purchaser to rescission of the contract unless it can be shown that he could get something substantially different from what he contracted for if specific performance were decreed. He will, however, be entitled to compensation.

Flight v. Booth (1834) 1 Bing. (N. C.) 370 distinguished.

SHEPHERD v. CROFT, [1911] 1 Ch. 521; 80 L. J. [Ch. 170; 103 L. T. 874—Parker, J.]

10. Title Offered not Substantiated—Another Good Title Shown—Possessory and Statutory

Title.—The Court will compel a purchaser to take a title which is a good title acquired by adverse possession under the Statute of Limitations, although the vendor contracted to make quite another title, and failed to do so, provided the vendor can show that the persons who ought rightfully to have taken under that other title are barred by the statute.

IN RE ATKINSON AND HORSELL'S CONTRACT, [1912] 1 Ch. 2; [1911] W. N. 224; 56 Sol. Jo. 73—Eady, J.

XIII. TITLE DEEDS.

[No paragraphs in this vol. of the Digest.]

SALFORD HUNDRED COURT.

See **COURTS**.

SALMON.

See **FISHERIES**.

SALVAGE.

See **ADMIRALTY; SHIPPING AND NAVIGATION**.

SAMPLES.

See **FOOD AND DRUGS; SALE OF GOODS**.

SANITATION.

See **HIGHWAYS; METROPOLIS; PUBLIC HEALTH**.

SATISFACTION AND DISCHARGE.

See **CONTRACT; JUDGMENT**.

SATISFACTION IN EQUITY.

See **WILLS**.

SAVINGS BANKS.

See **BANKERS AND BANKING**.

SCHOOLS AND SCHOOLMASTERS.

See **CHARITIES; EDUCATION**.

SCIENTER.

See ANIMALS.

SCIENTIFIC AND LITERARY SOCIETIES.

[No paragraphs in this vol. of the Digest.]

SCOTTISH LAW.

See also MASTER AND SERVANT, No. 40;
PEERAGES, No. 1; SALE OF LAND,
No. 6; STOCK EXCHANGE, No. 1.

1. Heritable Office — Hereditary Standard Bearer of Scotland—Nature of Office.—The office or dignity of Royal Standard Bearer of Scotland was granted *jure sanguinis*, and therefore, as there had been no failure of heirs who could have exercised the right, the alleged vesting of the office by an apprisement in the predecessor of the respondent in 1670 was inoperative, because the office was neither feudal nor made alienable, nor put *in commercio* by any Act of Parliament.

Decision of Ct. of Sess. ([1908] S. C. 1237; 45 Sc. L. R. 949) reversed.

WEDDERBURN *v.* EARL OF LAUDERDALE, [1910] A. C. 342; 26 T. L. R. 389; 54 Sol. Jo. 441; [1910] S. C. (H. L.) 35; 47 Sc. L. R. 532—H. L. (Sc.)

2. Heritable Office—Usher of White Rod—Statute—Interpretation—Contemporanea Expositio—Treaty of Union, Ratified by Scots Acts, 1707, c. 7, and by 6 Anne, c. 11, art. 20.—The Treaty of Union, art. 20, enacts "That all heritable offices, superiorities, heritable jurisdictions, offices for life, and jurisdictions for life, be reserved to the owners thereof as rights of property, in the same manner as they are now enjoyed by the laws of Scotland notwithstanding this treaty."

The Usher of the White Rod at the time of the Union was entitled to receive certain fees from the recipients of honours conferred by the King as Sovereign of Scotland, and could recover these fees from a Scotsman in whatever part of the King's dominions he, the grantee, might be in, and from an Englishman if he, the grantee, received the honour while in Scotland. From 1766 to 1904 the holders of the office claimed and received fees from the grantees of titles and dignities of the United Kingdom.

HELD—that although the effect might be to deprive the Usher of valuable emoluments, the terms of art. 20 of the Treaty of Union were too unambiguous to be open to interpretation by any custom or practice which had grown up since, that by it the rights pertaining to the office of Usher were as before the Union, and consequently fees were only payable by a grantee of a Scottish honour or dignity, not by the grantees of honours or dignities of the United Kingdom.

Y.D.

Decision of Ct. of Sess. ([1910] S. C. 1037; 47 Sc. L. R. 734) reversed.

LORD ADVOCATE *v.* WALKER TRUSTEES, [1911] W. N. 245; 28 T. L. R. 101; 49 Sc. L. R. 73—H. L. (Sc.)

3. Lease — Outgoing — Arbitration — Valuation of Sheep Stock—Reference in Lease—Reference in Statute—Agricultural Holdings (Scotland) Act, 1908 (8 Edw. 7, c. 64), s. 11 (1).—The Agricultural Holdings (Scotland) Act, 1908, sect. 11, sub-sect. (1), enacts, "All questions which under this Act or under the lease are referred to arbitration shall . . . be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions set out in the Second Schedule to this Act."

A lease of a sheep farm provided that at the expiry of the lease "the tenant shall leave the sheep stock on the farm to the proprietors or incoming tenant according to the valuation of men mutually chosen, with power to name an oversman."

HELD—that, in Scottish law, these words were a reference to arbitration to which the Act applied, and that a single arbiter fell to be appointed.

Decision of Ct. of Sess. ([1909] S. C. 1254; 46 Sc. L. R. 918) affirmed.

STEWART *v.* WILLIAMSON, [1910] A. C. 455; [80 L. J. P. C. 29; 102 L. T. 551; [1910] S. C. (H. L.) 47; 47 Sc. L. R. 536—H. L. (Sc.)

4. Succession — Election — Approbate and Reprobate — Invalid Exercise of Power of Appointment — Conditions of Acceptance of Legacies.—It is the law of Scotland as of England that no person can accept and reject the same instrument. Where therefore a deed or will professes to make a general disposition of property for the benefit of a person named in it, such person cannot accept a benefit under the instrument without at the same time conforming to all its provisions and renouncing every right inconsistent with them.

PITMAN *v.* CRUM EWING, [1911] A. C. 217; [80 L. J. P. C. 178; 104 L. T. 611; 48 Sc. L. R. 401—H. L. (Sc.)

5. Trustee — Compromise on Advice of Law Agent — Personal Liability of Trustee — Duty to make Annuities Real Burden on the Estate.—A testator whose assets consisted of heritable and personal property used in his business by trust disposition and settlement disinherited the children of his first marriage and his daughter by his second marriage, leaving them nothing whatever, and directed his trustees to pay to his wife an annuity of £300 per annum during her life, and an annuity of £200 to his son John and Helen his wife during their lives, and to convey to his son George the whole residue of his estate, "but always with and under the burden of the liferent to my said wife of my properties in Glasgow and Girvan and also under burden

Scottish Law—Continued.

of the payment of the annuities to my said wife and to my son and his wife."

The disinherited children upon the death of the testator threatened to take legal proceedings to set aside his disposition on the ground of want of capacity and undue influence, and also claimed to recover their legitim share of his assets. The trustees (one of whom was the appellant), acting on the advice of a law agent of high standing and acknowledged character in the profession, compromised the claims, and borrowed the sum required to carry out the compromise on the security of the heritable estate. They also allowed the son George to take possession of the business without making the annuities to the son John and his wife primary real burdens on the heritable subjects. After a few years the business failed, and there was not sufficient to pay the annuitants:—

HELD—that the appellant was not liable for breach of trust, for there was no proof that he and his co-trustees in agreeing to and carrying out the compromise had been guilty of negligence.

Decision of Ct. of Sess. ([1909] S. C. 47) reversed.

EATON v. BUCHANAN, [1911] A. C. 253; 48 [Sc. L. R. 481—H. L. (Sc.)]

SEA AND SEASHORE.

See WATERS AND WATERCOURSES.

SEAMEN.

See MASTER AND SERVANT; SHIPPING AND NAVIGATION.

SECRET COMMISSIONS.

See AGENCY.

SECURITY FOR COSTS.

See PRACTICE AND PROCEDURE.

SEDUCTION.

See HUSBAND AND WIFE; MASTER AND SERVANT.

SEPARATE PROPERTY OF MARRIED WOMEN.

See HUSBAND AND WIFE.

SEPARATION, JUDICIAL.

See HUSBAND AND WIFE.

SEQUESTRATION.

See CONTEMPT; PRACTICE AND PROCEDURE.

SET-OFF AND COUNTER-CLAIM.

See also COUNTY COURTS, No. 6.

1. Judgment in Action and on Counter-claim—Amounts Due Arising out of Same Relationship—Balance of Costs and Amounts Recovered on Counter-claim—Discretion—Judgment on Counter-claim for Rent Accrued after Action—Balance at Judgment in Defendant's Favour—R. S. C., Ord. 65, r. 14.]—It is in the discretion of the Court to order a set-off of the balance of amounts recovered by a defendant on his counter-claim over damages and a sum awarded to the plaintiff as against a balance of costs of action and counter-claim due to the plaintiff.

MEYNALL v. MORRIS, 104 L. T. 667; 55 Sol. [Jo. 480—Eve, J.]

2. Counter-claim—Costs—Form of Entering Judgment.]—The plaintiff claimed damages for fraudulent misrepresentation whereby she was induced to purchase a business. The stock in trade taken over was valued at £90 15s. 9d., "for which sum the plaintiff is willing to give the defendant credit in account against the damages herein claimed." The defendant denied the alleged fraud and counterclaimed for the £90 15s. 9d. The jury awarded the plaintiff £50 on her claim and found for the defendant on the counter-claim.

HELD—that judgment should be entered for the defendant for £40 15s. 9d., with costs on the claim and counter-claim.

SHARPE v. HAGGITH, 27 T. L. R. 548; 55 [Sol. Jo. 669—Lord Coleridge, J.]

SETTLEMENT AND REMOVAL.

See POOR LAW.

SETTLEMENTS.

	COL.
I. GENERAL	549
[No paragraphs in this vol. of the Digest.]	
II. CAPITAL MONEYS.	
(a) Improvements.	
(i.) <i>General</i>	549
(ii.) " <i>Additions and Alterations Reasonably Necessary</i> "	550
[No paragraphs in this vol. of the Digest.]	
(iii.) <i>Rebuilding Mansion House</i>	
(b) Investment	550
III. COMPOUND SETTLEMENTS	550
[No paragraphs in this vol. of the Digest.]	
IV. CONSTRUCTION AND OPERATION.	
(a) General	550
(b) Estate Clause	551
[No paragraphs in this vol. of the Digest.]	
(c) Words of Limitation	551
V. FORFEITURE	551
VI. HEIRLOOMS	552
VII. MARRIAGE SETTLEMENTS.	
(a) General	552
[No paragraphs in this vol. of the Digest.]	
(b) Covenant to Settle After-acquired Property	552
(c) Illegal Consideration	553
[No paragraphs in this vol. of the Digest.]	
(d) Interpretation	553
(e) Power of Appointment	553
VIII. TENANT FOR LIFE.	
(a) General	555
[No paragraphs in this vol. of the Digest.]	
(b) Persons having Powers of Tenant for Life	555
(c) Powers.	
(i.) <i>General</i>	556
(ii.) <i>Leasing</i>	557
[No paragraphs in this vol. of the Digest.]	
(iii.) <i>Sale</i>	557
(d) Remainderman and Tenant for Life	557
(e) Rights and Duties	559
IX. TRUSTEES	559
X. VOLUNTARY SETTLEMENTS	560

See also DEATH DUTIES, I.; POWERS;
REVENUE, No. 17.

I. GENERAL.
[No paragraphs in this vol. of the Digest.]

II. CAPITAL MONEYS.

See also Nos. 17, 19, *infra*; INTOXICATING
LIQUORS, No. 7.

(a) Improvements.

(i.) General.

1. *Open Space—Golf Course and Club-house—Settled Land Act, 1882 (45 & 46 Vict. c. 38),*

s. 25 (xvii.).]—The construction of a golf club-house and the laying out of a golf course held to be an "improvement" within the meaning of sect. 25 (xvii.), of the Settled Land Act, 1882, as being an "open space."

IN RE EARL DE LA WARR'S SETTLED ESTATES,
[1911] W. N. 171; 27 T. L. R. 531—
Eve, J.

(ii.) "*Additions and Alterations Reasonably Necessary.*"

[No paragraphs in this vol. of the Digest.]

(iii.) *Rebuilding Mansion House.*

See Nos. 21, 23, *infra*.

(b) Investment.

See also TRUSTS, No. 14.

2. *Land Purchased by Trustees as Investment under Power—No Express Power to Vary Investments—Implied Power—Power of Sale—Conflicting Powers of Tenant for Life and Trustees—Consent of Tenant for Life—Concurrence in Conveyance—Title—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 56.*—In an ordinary case a direction to trustees to invest in particular investments implies a power to vary investments, and this implied power gives the trustees a power to sell real estate in which they have power to invest for the occupation of a tenant for life.

Where the trustees and the tenant for life both have powers of sale, and the consent of the tenant for life is required under sect. 56 of the Settled Land Act, 1882, a purchaser is not entitled to insist on the tenant for life concurring in the conveyance, if there is evidence that he in fact consented, though his consent was not in writing.

In re Cooper's Trusts ([1873] W. N. 87) followed.

IN RE POPE'S CONTRACT, [1911] 2 Ch. 442; 80 [L. J. Ch. 692; 105 L. T. 370—Neville, J.

III. COMPOUND SETTLEMENTS.

[No paragraphs in this vol. of the Digest.]

IV. CONSTRUCTION AND OPERATION.

(a) General.

3. *Annuity—Charge of Annuity on Income or Corpus—Direction to Pay Annuity out of Income—Gift over—Subject Thereto.*—Where a settlement contained a trust for the payment of an annuity out of income, followed by a gift over of the corpus of the settled property "subject thereto":—

HELD—that the annuity was charged on the corpus of the settled property.

In re Bigge ([1907] 1 Ch. 714) overruled.

IN RE WATKINS'S SETTLEMENT, *WILLS v.*
[SPENCE, [1911] 1 Ch. 1; 80 L. J. Ch. 102;
55 Sol. Jo. 63—C. A.

4. *Annuity—Direction to pay out of Income—Charge on Corpus—Continuing Charge on Income.*—The trustees of a settlement were directed to pay an annuity out of income, or

IV. Construction and Operation—Continued.

such of it as should exist, and subject thereto to stand possessed of the trust funds in trust for the persons therein named absolutely. The income was insufficient to pay the annuity.

HELD—that the annuity could not be charged on *corpus*, nor was it a continuing charge on the income.

In re Boden ([1907] 1 Ch. 132) followed.
IN RE BOULCOTT'S SETTLEMENT, *WOOD v. BOULCOTT*, 104 L. T. 205; 55 Sol. Jo. 313—Parker, J.

(b) Estate Clause.

[No paragraphs in this vol. of the Digest.]

(c) Words of Limitation.

5. *Will—Real Estate Limitations in Strict Settlement—Legal Uses—Limitation to A. for Life. Remainder to his Sons in Tail Male. Remainder to B. for Life—Disclaimer by A. of Life Estate—No Present Issue of A.—Acceleration of B.'s Life Estate—Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33).*—Testator, by his will, devised certain freehold estates to the use of his eldest son, J., for life, with remainder to the use of his first and other sons successively in tail male, with remainder to his grandson W., the son of his second son J. S., for life, with remainders over. Then, after giving numerous legacies and annuities, the testator devised and bequeathed his real and personal estate not otherwise specifically disposed of to trustees upon trust to sell and convert, and to stand possessed of the proceeds upon the trusts therein mentioned. J., the testator's eldest son, had disclaimed the estate for life limited to him by the will. He was married and his wife was living, but he had no issue and there was no prospect of any.

HELD—that the estate for life in remainder of W. was not accelerated by J.'s disclaimer, but that the rents and profits of the disclaimed estate during the life of J., so long as he had no son, formed part of the testator's residuary estate and were distributable as income of that estate.

Carrick v. Errington (1726) 2 P. Wms. 361, affirmed by H. L. *sub nom. Errington v. Carrick* (1728) 5 Bro. P. C. 391) discussed and applied.

IN RE SCOTT, *SCOTT v. SCOTT*, [1911] 2 Ch. 374; [80 L. J. Ch. 750; 105 L. T. 577—Warrington, J.

V. FORFEITURE.

See also No. 13, *infra*; POWERS, No. 8.

6. *Gift of Income—Until Event Depriving Beneficiary of Same—Divorce—Order of Divorce Court Extinguishing Interest.*—Under a marriage settlement a husband had a life interest until some event happened which would deprive him of the right to receive the same or any part thereof. He was divorced, and by an order of the Court his life estate was extinguished until his youngest child attained twenty-one.

HELD—that the order operated as a forfeiture.

IN RE CAREW'S TRUSTS, *GELLIBRAND v. CAREW*, [103 L. T. 658; 55 Sol. Jo. 140—Eve, J.

VI. HEIRLOOMS.

7. *“Personal Chattels”—Settled Heirlooms—Trustees—Tenant for Life and Reversioner—Mortgage of Heirlooms by Reversioner—Non-registration as Bill of Sale—“Choses in Action”—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), ss. 3, 4—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 3, 8.*—Where chattels are settled as heirlooms either by a direct gift to one for life with remainder to another, or by an assurance or bequest upon trust for one for life with remainder to another, the interest of the reversioner in the chattels, whether legal or equitable, is a “chose in action” within the meaning of the exception in sect. 4 of the Bills of Sale Act, 1878. Therefore a mortgage by the reversioner of his legal or equitable reversion in the chattels is exempt from the operation of the Bills of Sale Acts and does not require registration under those Acts.

In re Tritton (1889) 61 L. T. 301) followed.

IN RE THYNNE, *THYNNE v. GREY*, [1911] 1 Ch. [282; 80 L. J. Ch. 205; 104 L. T. 19; 18 Manson, 34—Neville, J.

VII. MARRIAGE SETTLEMENTS.

See also No. 6, *supra*; Nos. 24, 26, *infra*; BANKRUPTCY, No. 29.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) Covenant to Settle After-acquired Property

See also BANKRUPTCY, No. 25.

8. *Construction—“Become Entitled to any Estate or Interest”—Assignment of Even Date by Wife—Ultimate Trust for Wife—Wife's Contingent Interest—Vesting in Possession during Coverture—Change of Interest—Operation of Covenant.*—Upon attaining the age of twenty-one years in 1907, the plaintiff became absolutely entitled in possession to one-third of her parents' marriage settlement funds and was contingently entitled to a further one-third share in the same funds upon the death of either of her two younger brothers before attaining the age of twenty-one years.

In contemplation of her marriage in 1909 the plaintiff by deed assigned (*inter alia*) her one-third share of certain mortgage debts constituting part of her late mother's marriage settlement fund “and all other if any her share and interest in the said mortgage debts” to trustees upon trust after the marriage to raise thereout, and out of certain stocks, funds, and securities already transferred, the sum of £12,000, and subject thereto to stand possessed of the premises thereby assigned and the said stocks, funds, and securities in trust for the plaintiff absolutely. By her marriage settlement of even date the £12,000 was settled upon the usual trusts of a wife's fund, and the plaintiff thereby covenanted with the trustees that if she should at any time during the intended coverture “become entitled in any manner and for any estate or interest” to any real or personal estate exceeding in value £500 at one time and from one and the same

VII. Marriage Settlements—Continued.

source (except as therein mentioned) she would convey the same to the trustees upon trust to sell and convert (a reversionary interest not to be sold except for special reason before it fell into possession) and to hold the proceeds upon the trusts of the wife's fund. Her younger brother Francis died under the age of twenty-one years shortly after the plaintiff's marriage.

HELD—(1.) that the plaintiff's interest on attaining twenty-one in the shares to which her younger brothers were entitled contingently on their attaining twenty-one in their parents' marriage settlement funds was a contingent and not a vested interest.

In re Holford ([1894] 3 Ch. 30) followed.

HELD—(2.) that the plaintiff's contingent interest in Francis's share of the mortgage debts passed by the assignment to the trustees, and that, subject to raising the £12,000, the moneys representing such share were payable to the plaintiff unaffected by her covenant, which must be read and construed in the light of the trusts contained in the assignment of even date and not so as to defeat those trusts; and

HELD—(3.) that the plaintiff's share in her parents' marriage settlement funds (other than the mortgage debts) which fell into possession on her brother Francis's death was caught by the covenant in her settlement.

Archer v. Kelly ((1860) 1 Drew. & Sm. 300) followed.

IN RE WILLIAMS'S SETTLEMENT. *WILLIAMS v. WILLIAMS*, [1911] 1 Ch. 441; 80 L. J. Ch. 249; 104 L. T. 310; 55 Sol. Jo. 236.
Eve, J.

9. *Covenant to Settle Future Property of £200 and Upwards in Value—Policy for £500 on Life of Husband—Voluntary Payment of Premiums by Husband.*—An endowment policy of assurance for £500, on which an annual premium of £6 12s. is payable for twenty years, taken out by a husband on his own life for the benefit of his wife, the premiums being paid by the husband, is not caught by a covenant to settle all the real and personal property to which the wife after the said intended marriage, or at any time during her coverture shall become entitled, either in possession, reversion, or remainder or otherwise, except any property acquired at one and the same time, not exceeding in amount or value the sum of £200.

IN RE HARCOURT'S TRUSTS. *WHITE v. HARCOURT*, [1911] W. N. 214; 56 Sol. Jo. 72.
Eady, J.

(c) Illegal Consideration.

[No paragraphs in this vol. of the Digest.]

(d) Interpretation.

10. *Portions—Younger Children—"Eldest Son"—"Heir Male or Heir Male Apparent"—"Younger Son Afterwards Becoming Eldest Son—Exclusion."*—By a marriage settlement made in 1861 real estate was limited to uses under which A. became tenant for life with remainder to his first and other sons in strict

settlement. On the same day was executed a settlement of personalty by which it was declared that after the death of A. and his intended wife the trustees should stand possessed of the trust funds in trust for the children of the marriage "other than an eldest or only son or other son who before attaining the age of twenty-one years shall be or become the heir male or heir male apparent of" A. as A. and his wife should appoint. Each of the settlements was made in consideration of the marriage, but neither of them contained any express reference to the other. A. had five children—a son W., who attained twenty-one, disinherited and resettled the estate, and died a bachelor in 1899; a son V., who attained twenty-one, became eldest son on the death of W., and took a life interest under the resettlement; B., who died an infant; and two others who were still living. A. died in 1910, and V. thereupon became entitled to the settled real estate for his life:—

HELD—that the two settlements must be read together, but that V. was not excluded from a share in the settled personalty.

IN RE WRITTESLEY'S SETTLEMENT. *WRITTESLEY v. FOWLER*, [1911] 1 Ch. 708; 80 L. J. Ch. 457; 104 L. T. 281—Parker, J.

11. *Agreement for Ante-nuptial Settlement of Whole Estate—Residuary Interest under a Subsequent Will—"May be Entitled."*—By an ante-nuptial agreement the husband agreed that he would forthwith execute a settlement "of all my share, property or interest, as well vested or accruing, to which I may be entitled under any will or settlement." The settlement was never made, but many years after the agreement had been executed the husband became entitled to residue under the will of his father.

HELD—that such residue was not caught by the words of the agreement.

IN RE RIDLEY'S AGREEMENT. *RIDLEY v. RIDLEY*, 55 Sol. Jo. 838—Eady, J.

12. *Portions—Younger Children—Children "Other than an Eldest or Only Son"—"Younger Daughter Debarred from Taking as a Younger Child—Elder Daughter Taking as a Younger Child."*—By a settlement executed in 1843 lands were conveyed to trustees to L'E. for life, with remainder to his sons in tail male, with remainder, in default of male issue, as to two of the lands, to his female issue as L'E. should appoint, and as to the other land to certain other issue in tail male, with a power to L'E. to charge the lands with a sum of £3,000 as a provision for the younger child or children of L'E. By a marriage settlement executed in 1850 on the marriage of L'E., L'E., in pursuance of said power, charged the said lands with the sum of £3,000, in favour of the younger children of the intended marriage "other than an eldest or only son." There were no sons of the marriage. L'E. by his will appointed the lands over which he had power of appointment to his younger daughter in fee simple.

HELD—that the existence of a son was not required to bring into operation the provision of

VII. Marriage Settlements—Continued.

the charge for younger children : that the younger daughter, having taken the bulk of the lands under the limitations of the settlement, was debarred from taking under the provision for younger children, and that the elder daughter alone took under the said provision.

L'ESTRANGE v. WINNIETT, [1911] 1 I. R. 62 — [Ross, J., Ireland]

(e) Power of Appointment.

See POWERS.

VIII. TENANT FOR LIFE.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) Persons having Powers of Tenant for Life

13. *Trust to Pay Residue of Income to Wife During Widowhood—Forfeiture—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 58 (1) (ix.).—A testator devised his real estate upon trust out of the rents and profits and until the expiration of ten years after his death, or until the death or marriage again of his wife, whichever should be the longer period, to pay certain annuities and the expenses of management of his estate, and to pay the ultimate residue of the rents and profits to his wife during widowhood. Full powers of management were conferred upon the trustees by the will.

HELD—that the widow was a person having the powers of a tenant for life under clause ix. of the Settled Land Act, 1882, sect. 58 (1).

The word "forfeiture" in clause ix. must be construed to include cesser, or determination on bankruptcy, alienation, remarrying or any other event.

In re Baroness Llanover ([1907] 1 Ch. 635) distinguished, and the *semble* in the head-note discussed.

IN RE SUMNER'S SETTLED ESTATES, [1911] 1 [Ch. 315; 80 L. J. Ch. 257; 103 L. T. 897; 27 T. L. R. 173; 55 Sol. Jo. 155—Eve, J.

14. *Trust for Accumulation until Life Tenant Attains Twenty-seven—Settled Land Act, 1882* (45 & 46 Vict. c. 38), ss. 2 (5) (7) (10), 58 (1) (vi.).—A testator devised real estate in settlement, and directed his trustees to accumulate the rents and profits and to pay an annuity to A., the first life tenant, until A. should attain the age of twenty-seven years. The testator did not give his trustees any powers of letting. At the age of twenty-five A. desired to exercise the powers of a tenant for life under the Settled Land Acts.

HELD—that he was entitled to exercise such powers by virtue of sect. 58, sub-sect. 1, clause vi., of the Settled Land Act, 1882.

In re Martyn, Coode v. Martyn ((1900) 69 L. J. Ch. 733) and *Annesley v. Woodhouse* ([1898] 1 I. R. 69) followed.

In re Strangways, Hickley v. Strangways ((1886) 34 Ch. D. 423) distinguished.

IN RE LLEWELLYN, LLEWELLYN v. LLEWELLYN, [1911] 1 Ch. 451; 80 L. J. Ch. 259; 104 L. T. 279; 55 Sol. Jo. 254—Joyce, J.

15. *Executory Gift over—Infants—Settled Land Act, 1882* (45 & 46 Vict. c. 38), s. 58 (1) (ii.).—A testator by his will devised certain freehold property upon trust for his daughter for life, and after her death for her children who, being sons, should attain twenty-one, or, being daughters, should attain that age or marry. The daughter died in July, 1910, leaving four children, the eldest of whom attained twenty-one in February, 1909.

HELD—that the eldest child was entitled to the entirety of the rents until the next child attained a vested interest, and therefore was a person having the powers of a tenant for life under the Settled Land Act, 1882, sect. 58, sub-sect. 1 (ii.).

IN RE WALMSLEY, [1911] W. N. 139; 105 [L. T. 332; 55 Sol. Jo. 600—Eve, J.

16. *Assignment of Life Estate by First Tenant for Life to Second Tenant for Life—Merger—Power of Sale—Settled Land Act, 1882* (45 & 46 Vict. c. 38), ss. 2 (5), 3, 50, 51.—Where the first tenant for life of settled lands has assigned his life estate to the second tenant for life under the settlement, so that the life estate of the former has become merged in that of the latter, the power of sale conferred on a tenant for life by the Settled Land Acts can be exercised by the second tenant for life, notwithstanding the provisions of sect. 50 of the Settled Land Act, 1882.

Observations of Chitty, L.J., in *In re Mundy and Roper's Contract* ([1899] 1 Ch. 275, 296), and of Swinfen Eady, J., in *In re Barlow's Contract* ([1903] 1 Ch. 382, 384) considered.

IN RE BRUEN'S ESTATE, [1911] 1 I. R. 76; 45 [I. L. T. 38—Wylie, J., Ireland.

(c) Powers.

(i.) General.

17. *Assignment of Life Interest—Surveyors' Costs—Tenant for Life Required to Exercise his Powers—Costs Incurred by Tenant for Life—Settled Land Act, 1882* (45 & 46 Vict. c. 38), ss. 21 (10), 50, 53.—A tenant for life assigned his life interest in settled estates to an insurance company, and it was provided that he should receive an annuity out of the estates, which annuity was to be forfeited if he refused or neglected to exercise his powers under the Settled Land Acts when reasonably requested to do so by the company. He also covenanted not to exercise his powers as tenant for life without the company's consent, and to do all things reasonably required by them in relation to the exercise of his powers. On being requested by the company to sell a part of the settled estate he consulted surveyors as to the sufficiency of the price offered, and claimed that their fees were payable out of capital moneys.

HELD—that those fees were incurred by the tenant for life in relation to the proposed exercise of his power of sale and on account of his position as a trustee for all parties entitled under the settlement, and were payable out of capital moneys.

VIII. Tenant for Life—*Continued.*

HELD FURTHER—that when the company required the tenant for life to exercise his powers in the future he was entitled to obtain proper advice, but that he was not entitled to initiate a scheme for the exercise of his powers, and that if, when asked to exercise his powers, he was afforded, at the expense of the estate, reasonable information and advice, that fact would have an important bearing upon the question whether further costs were properly incurred by him.

IN RE HOPE, TARLETON v. HOPE, 28 L. T. R. [93—Warrington, J.

(ii.) *Leasing.*

No paragraphs in this vol. of the Digest.]

(iii.) *Sale.*

See Nos. 2, 16, 17, *supra*.

(d) **Remainderman and Tenant for Life.**

See also No. 17, *supra*; No. 23, *infra*; INTOXICATING LIQUORS, Nos. 4, 7; TRUSTS, No. 14.

18. Will—Settled Mortgages—Arrears of Interest at Testator's Death—Receipt of Rents of Mortgaged Properties by Trustees—Deficient Security—Apportionment of Rents as between Capital and Income.—A testator gave his residuary real and personal estate to trustees upon trust to sell, with power to postpone, and to divide into shares, each share being settled. The testator's assets included several mortgage debts the interest on which was in arrear at his death. The testator had entered into and remained in receipt of the rents of the mortgaged properties up to his death, and the trustees had continued in such receipt. The securities being deficient, the question arose between the tenants for life and the remaindermen as to the application of these rents:—

HELD—that the trustees must first apply each instalment of rent received since the testator's death from each mortgaged property in satisfaction of the arrears of interest which at the testator's death were due in respect of the mortgage, and then distribute the balance as income up to but not exceeding the interest accrued since the testator's death on the mortgage, and apply any excess as capital.

IN RE COAKS, COAKS v. BAYLEY, [1911] 1 Ch. [171; 80 L. J. Ch. 136; 103 L. T. 799—Warrington, J.

19. Fixtures—Mansion-house—Sale under Settled Land Acts.—A testator devised a mansion-house and other realty in strict settlement. In the mansion-house were certain carvings in wood affixed to the walls, which had been there since the house was built about the year 1680 or 1690. They were fixed originally by nails, screws, or pegs, driven through them into stiles or battens built into the walls; but there was evidence that they were independent of the constructional work of the house, and some of them had in fact been moved from their original positions.

HELD—that the carvings were fixtures and formed part of the mansion-house, and that the proceeds from their sale were capital moneys subject to the settlement.

IN RE LORD CHESTERFIELD'S SETTLED ESTATES, [1911] 1 Ch. 237; 80 L. J. Ch. 186; 103 L. T. 823—Joyce, J.

20. Unsuccessful Litigation by Tenant for Life for Protection of Estates—Costs—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 36.—Where a tenant for life commences litigation for the protection of the settled estate he should first apply for the leave of the Court. If he does not do so, but applies to the Court subsequently to sanction the proceedings, the Court will consider whether leave would have been originally granted; if it comes to the conclusion that leave would not have been so granted, the costs of the tenant for life will not be allowed out of the estate.

On such an application the costs of unsuccessful litigation will not, as a rule, be allowed out of the estate where it appears that the proceedings were of a speculative nature, even although the tenant for life acted in good faith and under legal advice.

IN RE YORKE, BARLOW v. YORKE, [1911] 1 Ch. [370; 80 L. J. Ch. 253; 104 L. T. 134—Neville, J.

21. Lease of Mansion-house by Tenant for Life Without Impeachment of Waste—Sum Recovered in Respect of Dilapidations—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 53.—Sums recovered in respect of dilapidations from a tenant of a mansion-house under a lease granted under the provisions of the Settled Land Acts by a tenant for life without impeachment of waste are not capital moneys payable to the trustees of the settlement, but are payable to the tenant for life as representing damages which he has sustained.

Noble v. Cass ((1828) 2 Sim. 343) applied. Decision of *Eady, J.* ([1911] 1 Ch. 351; 80 L. J. Ch. 302; 104 L. T. 200; 27 T. L. R. 214; 55 Sol. Jo. 236) reversed.

IN RE LACON'S SETTLEMENT, LACON v. LACON, [1911] 2 Ch. 17; 80 L. J. Ch. 610; 104 L. T. 840; 27 T. L. R. 485; 55 Sol. Jo. 551—C. A.

22. Shares in Company—Bonus Dividend—Option to Take New Shares—Capital or Income.—A company resolved to pay a bonus dividend to its shareholders, and gave them the option of taking new shares fully paid instead of the dividend in cash. The trustees of a settlement, who were registered shareholders, exercised the option and took new shares, which were of greater value than the dividend.

HELD—that the tenant for life was entitled to a charge on the shares for an amount equal to the cash dividend, but that the value of the shares in excess of that sum was capital.

Bouch v. Sproule ((1887) 12 App. Cas. 385) distinguished.

In re Northage ((1891) 60 L. J. Ch. 488) followed.

IN RE HUME NISBET'S SETTLEMENT, 27 [T. L. R. 461; 55 Sol. Jo. 536—Eve, J.

VIII. Tenant for Life—Continued

(e) Rights and Duties.

See No. 17, *supra*.

IX. TRUSTEES.

See also No. 2, *supra*; TRUSTS AND TRUSTEES, No. 17.

23. Fire Insurance—Mansion-house and Buildings—Will—“Necessary Expenses”—Insurance Inadequate—Increase—Tenant for Life and Remainderman—Trustees Not Unanimous—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 18.]—A testator devised his mansion-house and other buildings to three trustees upon trust “after payment thereof of all necessary expenses” to pay the rents and profits to his widow for life and then to his son for life. The widow and son were two of the executors and trustees. At the testator’s death the premises were insured against fire at much less than their value.

HELD—that neither under the trusts of the will as coming under the head of “necessary expenses” nor as a statutory obligation under sect. 18, subsect. 1 of the Trustee Act, 1893, ought the trustees to increase the fire insurance upon the premises devised in trust at the expense of the tenant for life.

IN RE McEACHARN, GAMBLES v. McEACHARN, [1911] W. N. 23; 103 L. T. 900; 55 Sol. Jo. 204—EVE, J.

24. Mortgage by Trustees of Settlement—Bankruptcy of Settlor—Bonâ fide Transaction without Notice—Covenant by Trustees, “as such Trustees but not Otherwise,” to Repay Principal—Effect of Covenant—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 43, 49.]—By a settlement made in 1903 on the marriage of R., a sum of £200,000, charged on his share in his father’s residuary estate, was settled on trusts for R. and his wife and the issue of the marriage with an ultimate trust for R. The settlement contained a power to the trustees to apply any part of the trust fund on R.’s request in writing in paying debts incurred by him, for which purpose they were to have full power of sale or mortgage. On November 18th, 1906, R. committed an act of bankruptcy, and on December 18th R. made a request in writing to the trustees in pursuance of which they applied to the plaintiff for a loan to pay off R.’s debts. The plaintiff advanced £800, to secure which a mortgage dated February 19th, 1907, was executed, and by it the trustees, “as such trustees but not otherwise,” covenanted to pay the £800 with interest, and they assigned to the plaintiff the property subject to the settlement of 1903 in exercise of the power contained in it. On January 16th, 1907, a receiving order was made against R., and in April, 1907, he was adjudicated bankrupt. In an action by the plaintiff to enforce the mortgage:—

HELD—(1) that the request by R. to the trustees in December, 1906, before the date of the receiving order was a *bonâ fide* transaction without notice within sect. 49 of the Bankruptcy

Act, 1883, and that the mortgage made in pursuance of it was valid and effectual, though made after the date of the receiving order; (2) that the words in the covenant “as such trustees but not otherwise” did not protect the trustees from liability; and (3) that the plaintiff was entitled to judgment.

IN RE ROBINSON’S SETTLEMENT, GANT v. [HOBBS, 28 T. L. R. 121—Warrington, J.]

25. Lands Settled Subject to an Annuity—Power of Sale in Trustees During Life of Tenant for Life—Sale by Tenant for Life—Death of Tenant for Life after Purchase-money Advanced—Remainderman Absolutely Entitled—Payment out of Residue—Appointment of Trustees for Purposes of Settled Land Acts.]—Lands in Ireland settled subject only to an annuity (not secured by a term) were, in the events that happened, limited to F. for life, with remainder to P. absolutely. By the settlement, the trustees were given a power of sale during the life of F. F. sold the settled lands under the Irish Land Purchase Acts, and died after the purchase-money had been advanced. The final schedule had been settled on the assumption that the residue would be paid to the trustees of the settlement. The annuitant objected, claiming to be put on the final schedule on the ground that the settlement was at an end.

HELD—(1) that, as a matter of form, an order should be made continuing the proceedings in the name of P.; (2) that the moneys in Court being capital moneys arising from the sale of the settled lands, which had been carried through by the tenant for life under the Settled Land Acts, the Court had power to appoint trustees for the purposes of the Settled Land Acts, and to pay the residue to them to be held upon the trusts of the settlement.

Semle, on the death of F. the trustees of the settlement ceased to be trustees for the purposes of the Settled Land Acts.

In re Mundy and Roper’s Contract ([1899] 1 Ch. 275) and *In re Wimborne and Browne’s Contract* ([1904] 1 Ch. 537) distinguished.

IN RE COLLIS’S ESTATE, [1911] 1 I. R. 267; 45 [I. L. T. 202—Wylie, J., Ireland.]

X. VOLUNTARY SETTLEMENTS.

26. Bankruptcy—Ante-nuptial Settlement—Intent to Defeat or Delay Creditors—Inference of Intent—Stat. 13 Eliz. c. 5—Interest to Daughter by Previous Marriage.]—A voluntary settlement may be declared void as against the settlor’s trustee in bankruptcy, without proof of actual intention to defeat or delay creditors, if the circumstances of the particular case be such that the settlement must necessarily have that effect.

A settlement by a widower on remarriage is voluntary as regards a daughter by a previous marriage interested therein.

Freeman v. Pope ((1870) 5 Ch. App. 538) followed.

CARRUTHERS v. PEAKE, 55 Sol. Jo. 291—Warrington, J.

SEVERAL FISHERY.

See FISHERIES.

SEWERS AND DRAINS.

- I. "DRAIN" OR "SEWER" COL. 561
- II. "SINGLE PRIVATE DRAIN" 561
[No paragraphs in this vol. of the Digest.]
- III. RIGHTS AND DUTIES.
- (a) General 561
[No paragraphs in this vol. of the Digest.]
- (b) Cesspools 561
[No paragraphs in this vol. of the Digest.]
- (c) Drainage and Sewerage 561
[No paragraphs in this vol. of the Digest.]
- (d) Nuisance 562
- (e) Vesting in Local Authority 562
- IV. LAND DRAINAGE 562
[No paragraphs in this vol. of the Digest.]

See also METROPOLIS, No. 10; RATES, No. 17; WATERS, 3, 4, 5.

I. "DRAIN" OR "SEWER."

See also METROPOLIS, No. 9.

1. *Natural Watercourse—Culverted by Owners of Land Vesting in Local Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55).*—The mere fact that a natural watercourse is culverted or piped by the several owners of the lands which are intersected by it does not make it a drain or sewer so as to vest it in the local authority under the Public Health Act, 1875.

SHEPHERD *v.* CROFT, [1911] 1 Ch. 521; 80 [L. J. Ch. 170; 103 L. T. 874—Parker, J.

2. *Natural Stream—Pollution—"Sewer."*—The mere pollution of a natural stream or watercourse by turning sewage into it does not convert it into a sewer. On the other hand, if it is substantially a sewer, the fact that at certain portions of the year clean water flows into it does not prevent it being a sewer. In each case it is a question of fact and degree.

ATTORNEY-GENERAL *v.* LEWES CORPORATION, [1911] 2 Ch. 495; 27 T. L. R. 581; 55 Sol. Jo. 703—Eady, J.

See S. C. WATERS, No. 5.

II. "SINGLE PRIVATE DRAIN."

[No paragraphs in this vol. of the Digest.]

III. RIGHTS AND DUTIES.**(a) General.**

[No paragraphs in this vol. of the Digest.]

(b) Cesspools.

[No paragraphs in this vol. of the Digest.]

(c) Drainage and Sewerage.

[No paragraphs in this vol. of the Digest.]

(d) Nuisance.

See WATERS, No. 3.

(e) Vesting in Local Authority.

See also No. 1, *supra*.

3. *Sewage Disposal Works—Pollution of Stream—Damage to Riparian Owner—Liability of Person by whose Act or Default the Pollution arose, although Sewer Vested in Local Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13.*—The mere fact that a sewer has vested in a local authority under sect. 13 of the Public Health Act, 1875, does not make the local authority *ipso facto* liable for the discharge of sewage matter from the sewer into a brook.

Waltham Holy Cross Urban District Council *v.* Lea Conservancy Board ((1910) 103 L. T. 192) followed.

TITTERTON *v.* KINGSBURY COLLIERIES, LD., 104 [L. T. 569; 75 J. P. 295; 9 L. G. R. 405—Div. Ct.

See S. C. WATERS, No. 4.

IV. LAND DRAINAGE.

[No paragraphs in this vol. of the Digest.]

SHANGHAI.

See DEPENDENCIES AND COLONIES.

SHARES.

See COMPANIES.

SHEEP SCAB.

See ANIMALS.

SHERIFFS AND BAILIFFS.

See also BANKRUPTCY, No. 12.

1. *Sheriff's Fees—Writ of Fi. fa.—Execution Withdrawn pursuant to Order of Court—Liability of Execution Creditors for Sheriff's Fees—Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 20 (2)—Order as to Fees of August 31st, 1888.*—The order as to fees made by the judges under the Sheriffs Act, 1887, provides (*inter alia*) that where the fees cannot be levied because the execution is withdrawn, satisfied, or "stopped," they are to be "paid by the person issuing the execution or the person at whose instance the sale is stopped, as the case may be." A sheriff, suing execution creditors for his fees, contended that this order

Sheriffs and Bailiffs—Continued.

did not alter the previously existing law as to the person liable for the sheriff's fees, and that accordingly the execution creditors were liable for such fees. The execution creditors contended that the order altered the previously existing law, and not only prescribed the amounts the sheriff was entitled to charge, but defined the persons from whom alone he was entitled to demand them.

HELD—that the order did not alter the existing law as to the liability for the sheriff's fees, and that the sheriff either completes his execution or withdraws, except in the one case where the official receiver or trustee in bankruptcy stops a sale, and that accordingly in the circumstances of the case the execution creditors were liable.

MONTAGUE v. DAVIES, BENACHI & Co., [1911]

[2 K. B. 595; 80 L. J. K. B. 1131; 104 L. T. 645—Div. Ct.]

SHIPPING AND NAVIGATION.

	COL.
I. OWNERSHIP AND CONTROL OF SHIPS.	
(a) Action of Restraint	565
[No paragraphs in this vol. of the Digest.]	
(b) Liability for Disbursements	565
[No paragraphs in this vol. of the Digest.]	
(c) Mortgage	565
(d) Sale	565
[No paragraphs in this vol. of the Digest.]	
(e) Ownership	565
[No paragraphs in this vol. of the Digest.]	
II. SEAMEN.	
(a) Wages	565
(b) Bonus	566
[No paragraphs in this vol. of the Digest.]	
(c) Effect of Carrying Contraband	566
[No paragraphs in this vol. of the Digest.]	
(d) Miscellaneous	566
(e) Termination of Service	567
III. HIRE OF SHIP.	
(a) Detention of Ship	567
[No paragraphs in this vol. of the Digest.]	
(b) Exceptions in Charter-party	567
(c) Loading and Discharge of Cargo	568
(d) Miscellaneous	568
(e) Payment of Freight	569
(f) Period of Hire	569
(g) Warranties	570
[No paragraphs in this vol. of the Digest.]	
IV. INCORPORATION OF CHARTER-PARTY IN BILL OF LADING	570
V. CARRIAGE OF GOODS.	
(a) Deviation of Ship	572
(b) Discharge of Cargo	572
(c) Documents of Title	572
(d) Exceptions in Bill of Lading	573
(e) Freight	574

V. CARRIAGE OF GOODS—Continued.	COL.
(f) Miscellaneous	574
(g) Short Delivery	575
(h) Through Bill of Lading	575
(i) Warranties	575
VI. DEMURRAGE.	
(a) Averaging Days	576
[No paragraphs in this vol. of the Digest.]	
(b) Colliery Guarantee	576
(c) Commencement of Lay Days	577
[No paragraphs in this vol. of the Digest.]	
(d) Computation of Time	577
[No paragraphs in this vol. of the Digest.]	
(e) Custom of Port	577
(f) Excepted Days	578
(g) Exceptions of Strikes, etc.	578
(h) Miscellaneous	579
[No paragraphs in this vol. of the Digest.]	
VII. MARITIME LIENS.	
(a) Generally	579
[No paragraphs in this vol. of the Digest.]	
(b) Owner's Lien	579
VIII. BOTTOMRY	580
[No paragraphs in this vol. of the Digest.]	
IX. GENERAL AVERAGE	580
[No paragraphs in this vol. of the Digest.]	
X. RULES FOR PREVENTING COLLISIONS.	
(a) Fog	580
(b) Generally	581
(c) Lights	581
(d) Narrow Channel	582
(e) Negligence	583
(f) Sound Signals	583
(g) Tug and Tow	583
(h) Vessels Crossing	584
XI. COLLISION ACTIONS.	
(a) Division of Loss	586
(b) Limitation of Liability	586
(c) Measure of Damages	587
[No paragraphs in this vol. of the Digest.]	
(d) Practice	587
(e) Miscellaneous	588
XII. SALVAGE.	
(a) Agreements for Salvage	589
[No paragraphs in this vol. of the Digest.]	
(b) Apportionment of Award	589
[No paragraphs in this vol. of the Digest.]	
(c) Basis of Valuation	589
(d) Derelicts	590
[No paragraphs in this vol. of the Digest.]	
(e) Generally	590
(f) Life Salvage	590
[No paragraphs in this vol. of the Digest.]	
(g) Practice	590
(h) Towage	590
XIII. TOWAGE CONTRACTS	591
XIV. PILOTAGE.	
(a) Authority of Pilot	592
[No paragraphs in this vol. of the Digest.]	

Shipping and Navigation—Continued.**XIV. PILOTAGE—Continued.**

- (b) Defence of Compulsory Pilotage . . . 592
 (c) Exempted Ships . . . 593
 [No paragraphs in this vol. of the Digest.]
 (d) Limits of Compulsory Pilotage . . . 593
 (e) Miscellaneous . . . 593
 [No paragraphs in this vol. of the Digest.]

XV. HARBOURS AND DOCKS.

- (a) Authority of Harbour Master . . . 593
 [No paragraphs in this vol. of the Digest.]
 (b) Dues . . . 593
 [No paragraphs in this vol. of the Digest.]
 (c) Liability of Harbour Authority . . . 593
 [No paragraphs in this vol. of the Digest.]
 (d) Liability of Wharf Owner . . . 593
 [No paragraphs in this vol. of the Digest.]
 (e) Miscellaneous . . . 594

XVI. MISCELLANEOUS SHIPPING REGULATIONS . . . 594

[No paragraphs in this vol. of the Digest.]

See also ADMIRALTY JURISDICTION AND PRACTICE; INCOME TAX, No. 5.

I. OWNERSHIP AND CONTROL OF SHIPS.**(a) Action of Restraint.**

[No paragraphs in this vol. of the Digest.]

(b) Liability for Disbursements.

[No paragraphs in this vol. of the Digest.]

(c) Mortgage.

See REVENUE, No. 16.

(d) Sale.

[No paragraphs in this vol. of the Digest.]

(e) Ownership.

[No paragraphs in this vol. of the Digest.]

II. SEAMEN.

See also MASTER AND SERVANT, Nos. 19, 51—53, 56—60, 67, 84.

(a) Wages.

1. *Expenses Caused by Absence Due to Desertion—Reimbursement—Desertion in Australian Port—Prohibited Immigrant—Fine Imposed on Master—Merchant Shipping Act, 1906* (6 Edw. 7, c. 48), s. 28.]—A ship in the course of a voyage arrived at Brisbane, at which port a Chinaman, who was a member of the crew, deserted. In respect of this desertion the master of the ship was fined £100 by a court of summary jurisdiction at Brisbane under an Act of the Commonwealth of Australia which imposed that penalty upon the master of any ship from which a prohibited immigrant, as the Chinaman was, entered the Commonwealth.

HELD—that the fine of £100 was not “an expense” caused to the master of the ship by the absence of the seaman due to desertion within sect. 28, sub-sect. 1 (b), of the Merchant Shipping Act, 1906, and that the master was,

therefore, not entitled to be reimbursed out of the wages of the seaman.

HALLIDAY v. TAFES. [1911] 1 K. B. 594; 80 [L. J. K. B. 388; 104 L. T. 188; 75 J. P. 165; 27 T. L. R. 186 Div. Ct.]

(b) Bonus.

[No paragraphs in this vol. of the Digest.]

(c) Effect of Carrying Contraband.

[No paragraphs in this vol. of the Digest.]

(d) Miscellaneous.

2. *Distressed Seaman—Expense of Repatriation and Maintenance Medical Attendance—Seaman Suffering from Disease brought on by his own Misconduct—Merchant Shipping Act, 1906* (6 Edw. 7, c. 48), ss. 32, 34, 35, 40, 41, 42.]—Where a seaman belonging to a British ship is left behind at a foreign port suffering from illness brought on by his own misconduct, the owners of the ship are liable for the expense of repatriation and maintenance, in the sense of board and lodging, till his departure for the return port, but they are not liable for any surgical or medical advice, attendance or medicine supplied to such seaman before his departure for the return port.

BOARD OF TRADE v. ANGLO-AMERICAN OIL CO., [1911] 2 K. B. 225; 80 L. J. K. B. 835; 104 L. T. 497; 27 T. L. R. 344; 16 Com. Cas. 151—Scrutton, J.

3. *Seaman Injured in Service of Ship—Expenses of Medical Attendance—“Proper Return Port”—Merchant Shipping Act, 1906* (6 Edw. 7, c. 48), ss. 34, 45—*Workmen’s Compensation Act, 1906* (6 Edw. 7, c. 58).]—A seaman was injured by an explosion on board a vessel two miles outside the limits of the port of Londonderry. He was landed at Moville, within the limits of the port of Londonderry, and received nursing and medical attention there.

HELD—that Moville was not a “proper return port” within the meaning of sects. 34 and 45 of the Merchant Shipping Act, 1906, and that, consequently, the shipowners were liable for the medical expenses incurred in the treatment of the injured man, although full compensation had been paid to him from the day of the accident under the Workmen’s Compensation Act, 1906.

NEWELL v. MACDEVITTE, 15 I. L. T. 188—[Holmes, L.J., Ireland.]

4. *Neglect of Duty—Omission to do Act requisite for Preserving Ship—Liability to Penalty—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 220.]—By sect. 220 of the Merchant Shipping Act, 1894, “If a master, seaman, or apprentice belonging to a British ship . . . by neglect of duty . . . (b) . . . omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction, or serious damage” he shall be guilty of a misdemeanour:—

HELD—that where a ship comes into collision with another vessel as the result either of the act of the master in placing the look-out man in

11. Seamen—Continued.

such a position on deck that his view ahead is partially obstructed, or of the failure of the look-out man to keep a good look-out, neither the act of the master nor the neglect of the look-out man is a neglect of duty of the kind contemplated by the section.

DEACON v. EVANS, [1911] 1 K. B. 571; 80 [L. J. K. B. 385; 104 L. T. 99; 75 J. P. 162; 11 Asp. M. C. 550—Div. Ct.]

(e) Termination of Service.

5. *Articles - Voyage to End*—"As may be Required by Master". *Discharge of Cargo - Taking Bunker Coal for Future Voyage - End of Voyage.*—A seaman signed articles to serve on board a ship for a voyage not to exceed two years and "to end at such port in the United Kingdom or Continent of Europe (within home trade limits) as may be required by the master." The ship sailed from London with a cargo and ultimately came to Rotterdam, where the last of the cargo was discharged. She then came to the Tyne, having between 100 and 200 tons of bunker coal on board. In the Tyne she took on board a further supply of 1,300 tons of bunker coal, and the seaman there claimed his discharge and wages on the ground that the voyage had come to an end. The master had not required the voyage to end at the Tyne, and he declined to discharge the seaman on the ground that the voyage was not completed, but he did not then say where the ship was proceeding to, but afterwards said that she was to proceed to Glasgow. The 1,300 tons of coal was not required to take the ship to Glasgow.

HELD—that the mere fact of taking on board the 1,300 tons of bunker coal in the Tyne was not of itself sufficient to show that the voyage ended at the Tyne, and that, as the master had not required it to end at the Tyne and it was not in fact ended there, the seaman was not entitled to claim his discharge and wages.

The Scarsdale ([1907] A. C. 373) followed.

HAYLET v. THOMPSON, [1911] 1 K. B. 311; 80 [L. J. K. B. 267; 103 L. T. 509; 74 J. P. 480; 11 Asp. M. C. 512—Div. Ct.]

III. HIRE OF SHIP.

(a) Detention of Ship.

[No paragraphs in this vol. of the Digest.]

(b) Exceptions in Charter-party.

6. *Strikes - Time Charter - Ship sent to a Port by Charterers with Knowledge of Strike.*—A ship was chartered under a time charter which contained the following clause: "Mutual exceptions: The owners and charterers shall be mutually absolved from liability in carrying out this contract in so far as they may be hindered or prevented by" (*inter alia*) "strikes." The charterers in good faith, in the ordinary course of trade, sent the ship to load a cargo of coal at a port where to their knowledge there was a strike at the collieries. The ship could have been employed in other ways. In consequence of the strike she was delayed for some time in obtaining a cargo.

HELD—that the charterers were liable to pay the agreed hire for the period of such delay.

Decision of C. A. affirmed.

BROWN v. TURNER, BRIGHTMAN & Co., 165 [L. T. 562—H. L.]

(c) Loading and Discharge of Cargo.

See also No. 26, *infra*.

7. *Obligation on Shipowners to Discharge Cargo - Expenses Necessary to Discharge Cargo in Proper Condition - Liability for Expenses.*—Where under a charter-party the shipowners have to discharge the cargo, they must, unless the terms of the charter-party exempt them from this liability, bear any expense which may be necessary to discharge the cargo properly; for example, if the cargo is loaded in bags the shipowners must bear the expense of repairing torn bags in order to prevent the leakage of their contents.

LEACH & Co., LD. v. ROYAL MAIL STEAM [PACKET Co., 104 L. T. 319; 16 Com. Cas. 143—Channell, J.]

8. *Charter-party - Shipowners Responsible to Charterers for Full Delivery of Cargo and Proper Stowage - Stevedores Employed by Charterers - Theft of Cargo by Stevedores.*—By a charter-party shipowners were made responsible for full and complete delivery of the cargo and also for its proper stowage by the stevedores, but the stevedores were to be employed by the charterers. When loading the ship for a voyage to Brazil the stevedores stole part of the cargo, and owing to their theft the charterers were unable to make full delivery at the Brazilian port. As the cargo actually delivered did not correspond with that shown on the ship's manifest, the Brazilian Government imposed fines on the local agent of the charterers. The charterers reimbursed their agent, and also paid damages to the owners of the goods which were stolen; and they now sought to recover the amounts of the fines and damages so paid by them from the shipowners.

HELD—that the clause in the charter-party which made the shipowners responsible for full and complete delivery of the cargo did not apply where the loss of cargo had been occasioned by the felonious acts of the charterers' own servants, and that therefore the shipowners were not liable for either the fines or the damages.

Quære, whether if the charterers had been protected by their bill of lading from any obligation in consequence of the theft to pay damages to the owners of the goods they could nevertheless under the charter-party have compelled the shipowners to make good the loss.

ROYAL MAIL STEAMSHIP Co. v. MACINTYRE [BROS. & Co., 16 Com. Cas. 231—Div. Ct.]

(d) Miscellaneous.

9. *Charter-party - Cancelling Clause - Option to Cancel on Non-arrival - Time when Option must be Exercised.*—A charter-party, dated March

III. Hire of Ship—Continued.

18th, 1907, contained the following clause: "The charterers or their agents have the option of cancelling this charter-party, provided the ship is not arrived as within described at Newcastle, New South Wales, by the 15th Dec., 1907." Shortly before December 15th, 1907, the charterers were informed by the shipowners that the ship was detained and could not arrive by the cancelling date, and they were asked to state whether they would exercise their option to cancel or not. This they refused to do, and required the shipowners to send the ship to Newcastle in accordance with the charter-party. The ship arrived at Newcastle on June 15th, 1908, when the charterers exercised their option to cancel, and refused to load her. In an action by the shipowners for damages for the defendants' refusal to load:—

HELD—that the charterers were entitled to exercise the option to cancel on the arrival of the ship at Newcastle, and were not bound to do so prior thereto.

Decision of *Bray, J.* (101 L. T. 954; 54 Sol. Jo. 217; 15 Com. Cas. 61; 11 Asp. M. C. 342) affirmed.

MOEL TRYVAN SHIPPING CO. LD. v. ANDREW [WEIR & CO., [1910] 2 K. B. 844; 79 L. J. K. B. 898; 103 L. T. 161; 15 Com. Cas. 307; 11 Asp. M. C. 469—C. A.

(e) Payment of Freight.

10. Lien for Freight and Dead Freight—Liability of Holders of Bills of Lading.—By a clause in a charter-party a vessel was to have a lien on the cargo for recovery of all bill of lading freight, dead freight, etc. By the bills of lading the consignees, as well as "performing all other conditions and exceptions as per charter-party," were to pay freight, "per the rate of freight as per charter-party per ton of 2,240 lbs. gross weight delivered in full . . . 6d. less if ordered to a direct port on signing last bill of lading." The vessel was ordered to a direct port.

By the charter-party the vessel was not to earn more freight than she would with a full cargo of wheat or maize in bags, but the charterers might ship other lawful merchandise, in which case freight was to be paid on the vessel's dead-weight capacity for wheat or maize in bags at the agreed rate of 12s. 6d. per ton, subject to the reduction of 6d. if the vessel was ordered to a direct port. The charterers failed to complete the loading.

HELD—that the owners were only entitled to recover from the holders of the bills of lading freight at the rate of 12s. per ton delivered, and were not entitled to succeed in their claim with respect to dead freight.

Decision of *C. A.* (101 L. T. 510; 25 T. L. R. 791; 14 Com. Cas. 303; 11 Asp. M. C. 317) affirmed.

RED "R." STEAMSHIP CO. v. ALLATINI [BROS. AND OTHERS, 103 L. T. 86; 26 T. L. R. 261; 15 Com. Cas. 290; 11 Asp. M. C. 434—H. L.

(f) Period of Hire.

11. Construction of Charter-party—"Six or Seven Consecutive Voyages During 1910"—Con-

struction.]—The plaintiffs chartered a ship under a charter-party which contained the following terms:—"This charter to remain in force for six or seven consecutive voyages (in charterer's option) during 1910. . . . Steamers have liberty to load homeward cargoes to U.K. or Continent. Steamers to have liberty to dry dock." On the ship's arrival at the loading port for the first voyage the charterers were unable to load her owing to a strike, and, although she arrived on January 3rd, there would have been no cargo available until January 11th. The ship, accordingly, did not load at that port, but proceeded to South Wales, where she loaded a cargo, which was carried to Italy, whence she returned to load under her original charter. The consequence was that she did not get home from her sixth voyage until after January 6th, 1911, when the charterers purported to exercise their option to load for seven voyages.

HELD—that the words "during 1910" were words of description and protection for both parties, the one being only bound to load, and the other only bound to supply, the steamer during 1910.

Pope v. Bavidge ((1854) 10 Exch. 73) not followed.

DUNFORD & CO., LD. v. CIA ANONIMA MARI- [TIMA UNION, 104 L. T. 811; 55 Sol. Jo. 424; 16 Com. Cas. 181—Scrutton, J.

(g) Warranties.

[No paragraphs in this vol. of the Digest.]

IV. INCORPORATION OF CHARTER-PARTY IN BILL OF LADING.

See also No. 10, supra; No. 26, infra.

12. Negligence Clause—Constructive Notice—Loss of Part of Cargo by Negligence—Liability of Shipowners.—By the terms of a charter-party the shipowners were exempted from liability in respect of loss occasioned by, *inter alia*, "accidents of navigation even when occasioned by negligence, default, or error in judgment of the master, mariners, or other servants of the shipowners." The bill of lading signed by the master, so far as it referred to the charter-party, contained only the words "all other conditions as per charter-party." The plaintiffs were the receivers of the cargo shipped under the bill of lading. In their contract of purchase they had stipulated with the sellers, "tonnage to be engaged on conditions of charter-party attached," which form contained the negligence clause. When the cargo arrived there was a shortage due to the negligence of those on board the vessel, in respect of which the plaintiffs sued the shipowners for damages.

HELD—that the proper inference from the facts was that the plaintiffs knew that the charter-party contained the negligence clause and therefore that the shipowners were not liable.

IV. Incorporation of Charter-party in Bill of Lading *Continued.*

Decision of C. A. ([1909] P. 219; 78 L. J. P. 90; 25 T. L. R. 138) reversed.

OWNERS OF S.S. *DRAUPNER* v. OWNERS OF CARGO [OF S.S. *DRAUPNER*, THE "*DRAUPNER*," [1910] A.C. 450; 79 L. J. P. 88; 103 L. T. 87; 26 T. L. R. 571; 11 Asp. M. C. 436—H. L.

13. Arbitration Clause—Action for Demurrage—*Stay of Proceedings.*—A clause in a charter-party provided for the discharge of the cargo by the steamer with customary steamer dispatch according to the custom of the port, and for demurrage at the rate of £25 a day if the steamer should be detained through any fault of the merchant or charterer. Another clause provided that any dispute or claim arising out of any of the conditions of the charter-party should be adjusted at the port where it occurred and settled by arbitration. By a bill of lading goods shipped under it were to be delivered to the shipper or his assigns, he or they paying freight, with other conditions as per charter-party. In the margin of the bill of lading was also written "all other terms and conditions and exceptions of charter to be as per charter-party including negligence clause."

The shipowner commenced an action in a county court against the holder for value of the bill of lading for demurrage alleged to have been incurred at the port of discharge. The county court judge stayed all proceedings in the action on the ground that the arbitration clause in the charter-party was incorporated in the bill of lading, and a Divisional Court affirmed the order:—

HELD—that the order staying proceedings must be discharged, as the arbitration clause in the charter-party did not apply to the dispute between the shipowner and the holder of the bill of lading.

Hamilton v. Mackie ((1889) 5 T. L. R. 677) approved.

Decision of C. A. (*sub nom.* The "*Portsmouth*," [1911] P. 54; 80 L. J. P. 36; 104 L. T. 10; 11 Asp. M. C. 530) affirmed.

T. W. THOMAS & CO., LD. v. PORTSEA STEAM-SHIP CO., LD., [1911] W. N. 151; 105 L. T. 257; 55 Sol. Jo. 615—H. L.

14. Damage to Deck Cargo—Part Substitution for Contract in Charter-party—Incorporation in Bill of Lading of Charter-party Terms—"At Charterers' Risk" Construction of Contract.—Under a bill of lading which contained the words "... all other conditions and exceptions as per charter-party. . . ." 900 barrels of tar were shipped on board the defendants' steamship *M.* The charter-party was a Chamber of Shipping wood charter (Scandinavia and Finland) under which the *M.* was to load a cargo of deals, battens, or boards, and the barrels of tar were shipped by arrangement in part substitution of the wood. At the request of the master of the *M.*, a clause was inserted in the bill of lading that the ship was "not liable for leakage and breakage," and on the margin of the charter-

party itself the master made the following indorsement:—"The master of the s.s. *M.* agrees to load 900 barrels of tar on deck for London at a freight of 2s. 2d. per barrel intaken." The charter-party contained the following clause:—"The steamer to be provided with a deck load, at full freight, at charterers' risk." The barrels arrived in a damaged condition owing to a quantity of heavy timber being stowed on top of them, with the result that a large number were crushed and broken and their contents wholly or partially lost.

HELD—that on the proper construction of the agreement between the parties, the words "at charterers' risk" were not incorporated into the contract under the bill of lading, and that the defendants were liable for the damage caused by the negligence of their servants.

THE "*MODENA*," 27 T. L. R. 529; *sub nom.* [CHIESMAN & CO. v. OWNERS OF S.S. "*MODENA*," THE "*MODENA*," 16 Com. Cas. 292—Div. Ct.

V. CARRIAGE OF GOODS.

See also PRACTICE, Nos. 15, 16.

(a) Deviation of Ship.

15. Deviation for Repairs—Unseaworthiness at Commencement of Voyage.—Where the necessity for a deviation arises from the default of the shipowner in sending the ship to sea in an unseaworthy state he cannot claim to be in a different position from that in which he would have been had the deviation itself been unnecessary, and is debarred from asserting against the cargo owners a lien upon the cargo for dead freight conferred upon him by the bills of lading.

Strang, Steel & Co. v. Scott & Co. ((1889) 14 App. Cas. 601) discussed and applied.

Decision of Walton, J. ([1910] 2 K. B. 309; 79 L. J. K. B. 1113; 102 L. T. 910; 26 T. L. R. 504; 54 Sol. Jo. 565; 15 Com. Cas. 268; 11 Asp. M. C. 421) reversed.

KISH v. TAYLOR, [1911] 1 K. B. 625; 80 L. J. [K. B. 601; 103 L. T. 785; 27 T. L. R. 174; 16 Com. Cas. 59; 11 Asp. M. C. 544—C. A.

(b) Discharge of Cargo.

See No. 7, *supra*; Nos. 26, 28, *infra*.

(c) Documents of Title.

See also SALE OF GOODS, No. 2.

16. Sale of Goods—C.I.F. Contract—Payment—Net Cash—Right of Inspection—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 28, 32, 34.—Payment under a c.i.f. contract containing the words "terms net cash," must, in the absence of any stipulation to the contrary, be made on the tender of the shipping documents, although the goods have not then arrived and the buyer has not had an opportunity of inspecting them to see if they are in accordance with the contract.

Decision of C. A. ([1911] 1 K. B. 934; 80 L. J. K. B. 584; 104 L. T. 577; 27 T. L. R. 331; 55 Sol. Jo. 383; 16 Com. Cas. 197) reversed. E. CLEMENS HORST CO. v. BIDDLEL BROTHERS, [1911] W. N. 211; 81 L. J. K. B. 42; 105 L. T. 563; 28 T. L. R. 42; 56 Sol. Jo. 50—H. L.

V. Carriage of Goods—Continued.

17. *Bill of Lading—Wrongful Delivery to Consignee—Indorsement of Bill of Lading by Consignee to Bank—Title Subsequently Acquiring—Trovee.*] A contract provided for the sale of certain oil to P. & Co. on the terms of cash against documents, P. & Co.'s name being inserted in the bill of lading at their request as shippers, and the bill of lading provided for the oil to be delivered to them or to their order. The draft attached to the bill of lading was then sold by the sellers to certain bill brokers, who subsequently sold the same on exchange to a bank at Amsterdam. On the arrival of the oil in London P. & Co. obtained from the defendants, who were the agents of the shipping company by whose vessel the oil was carried, delivery of the oil, without delivery of the bill of lading, on an indemnity being given by P. & Co. P. & Co. then approached the plaintiffs, who, as London correspondents of the Amsterdam bank, were holding the bill of lading as against the draft, and arranged with them to advance the money to take up the draft on condition that the plaintiffs should retain the bill of lading, which P. & Co. thereupon indorsed. In an action for trovee:—

HELD—that the plaintiffs were entitled to succeed, as although P. & Co. were not entitled to the possession of the bill of lading, the plaintiffs took over the rights of the Amsterdam bank on crediting them with the amount of the draft, which rights were perfected by the indorsement by P. & Co. of the bill of lading.

LONDON JOINT-STOCK BANK, LD. *v.* BRITISH [AMSTERDAM MARITIME AGENCY, LD., 104 L. T. 143; 16 Com. Cas. 102—Channell, J.

(d) Exceptions in Bill of Lading.

See also CARRIERS, No. 1.

18. *Craft Transit—"Vessel"—Barge—Unseaworthiness.*]—A bill of lading provided for the shipment of certain goods from London to G., in America, and contained a clause of exceptions which included damage from rain, frost, decay, pilferage, wastage, &c. It also contained exceptions in respect of damage or loss from boilers, &c., and "unseaworthiness, submerging or sinking of ship or admission of water into the vessel . . . unseaworthiness or unfitness of the vessel at commencement of, or before, or at any time during the voyage, perils of the seas, rivers, navigation or land transit of whatever nature or kind, and all damage, loss, or injury arising from the perils or things above mentioned." At the end of the bill of lading were the words: "All the above exceptions and conditions shall apply from the time when the goods come into the possession or custody of the carriers or their agents in warehouse or wharf in course of land or water transit or in any other situation."

In a claim for damages by the shippers in respect of injury caused by the unseaworthiness of a barge in which the cargo was carried:—

HELD—that the word "vessel" in the bill of

lading applied to the barge, and that, as a matter of construction, the last clause also had application to the barge, and the provision about unseaworthiness effectually protected the shipowners.

Decision of Hamilton, J. (102 L. T. 716; 54 Sol. Jo. 543) affirmed.

WIENER *v.* WILSONS AND FURNESS-LEYLAND [LINE, LD., 103 L. T. 168; 15 Com. Cas. 294; 11 Asp. M. C. 413—C.A.

19. *Liability for Loss by Fire—Warranty of Seaworthiness—Effect of Exceptions in Bill of Lading—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 502.*]—Sect. 502 of the Merchant Shipping Act, 1894, which exempts the owner of a British sea-going ship from liability for loss or damage to goods by fire where the loss or damage happens without his actual fault or privity, applies to protect the shipowner, even although there has been a breach by him of the warranty of seaworthiness. The parties to a contract for the carriage of goods by sea may, however, by the terms of their contract, exclude the operation of this section.

HELD, on the construction of a bill of lading—that the parties had excluded the operation of sect. 502, and that the shipowners were therefore not exempt from liability for loss by fire where it could be established that there had been a breach by them of the warranty of seaworthiness.

Decision of Bray, J. (28 T. L. R. 16; 56 Sol. Jo. 16) affirmed.

VIRGINIA CAROLINA CHEMICAL CO. *v.* NORFOLK AND NORTH AMERICAN STEAM SHIPPING CO., [1911] W. N. 233; 28 T. L. R. 85 —C.A.

(e) Freight.

See also No. 10, *supra*; No. 30, *infra*.

20. *Dead Freight—Lien—Unliquidated Damages.*]—A lien for dead freight covers a claim for unliquidated damages for short loading.

McLean *v.* Fleming ((1871) L. R. 2 Sc. & Div. 128) followed; Gray *v.* Carr ((1871) L. T. 6 Q. B. 522) not followed.

KISH *v.* TAYLOR, [1910] 2 K. B. 309; 79 L. J. [K. B. 1113; 102 L. T. 910; 26 T. L. R. 504; 54 Sol. Jo. 565; 15 Com. Cas. 268; 11 Asp. M. C. 421—Walton, J.

See S. C. on appeal, No. 15, *supra*.

(f) Miscellaneous.

21. *Berth Note—Arbitration Clause—"Dispute"—"Arising at Loading Ports"—Stay of Proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*]—The plaintiffs sent their steamship to load grain at a port in the Sea of Azof in accordance with a berth note under which the freighters were to act as agents for the ship and do the stevedoring at a fixed rate per 1000 chetwerts. The berth note provided that "in case of any dispute arising at loading ports" it was "to be submitted to the Rostoff-on-Don Bourse Court of Arbitration." The

V. Carriage of Goods—Continued.

steamship was loaded, and an account for stevedoring was submitted to the master, who signed it, the amount being deducted from the advance freight due to the shipowners. A copy of the account was then sent to the shipowners with the balance of the advance freight. The shipowners complained to the freighters in London that the stevedoring rate as shown in the account was not reckoned in the customary way, and brought an action in the county court to recover the amount which they alleged was an overcharge and which had been deducted from the advance freight. The freighters moved for and obtained a stay of the proceedings in the county court on the ground that the dispute was within the submission to the arbitration clause in the berth note.

HELD—that “dispute” meant matter in dispute, and, as it arose at the loading port, the matter should be referred to arbitration, and that the proceedings were rightly stayed.

THE “DAWLISH,” [1910] P. 339; 79 L. J. P. 111; [103 L. T. 315; 11 Asp. M. C. 496—Div. Ct.]

(g) Short Delivery.

See No. 8, *supra*.

(h) Through Bill of Lading.

See also CARRIERS, II. (c).

22. *Construction—Goods in Good Order at Place of Departure—Goods found Damaged on Arrival—Liability of Last Carrier.*—A quantity of flour in bags was consigned from Minneapolis, U.S.A., to Glasgow on a “through” bill of lading, signed by an agent on behalf of the various carriers on the route, “severally not jointly,” and bearing that the goods were “received at Minneapolis in apparent good order.” The bill of lading contained a condition that no carrier should be liable for damage not occurring on his portion of the route. On the discharge of the cargo at Glasgow a large number of bags were found to be damaged by water, and the consignees brought an action of damages against the ocean carriers, the steamship company which had carried them from New York.

HELD—that the steamship company were liable for the damage.

Decision of Ct. of Sess. ([1911] S. C. 791; 48 Sc. L. R. 648) reversed.

CRAWFORD v. ALLAN STEAMSHIP CO., 132 L. T. [Jo. 177; Times, December 20th, 1911—H. L. (Sc.)]

(i) Warranties.

See also No. 19, *supra*.

23. *Seaworthiness—Burden of Proof—Presumptions of Fact—Vessel's Record—Immediate Breakdown.*—The onus of proving unseaworthiness is upon those who allege it. This proposition of law is none the less applicable, although the vessel break down or sink shortly after putting to sea. But the enunciation of that proposition does not impair or alter presumptions of fact arising from the age, the low classing or non-classing, the non-survey of ship or machinery, the inability to insure, the laying-

up, the admitted defects, the poor record of a vessel generally, and finally the breakdown of the machinery immediately, or almost immediately, on the ship putting to sea.

Circumstances in which held that it lay with the owner to establish the seaworthiness of his vessel, the onus on the cargo owners who alleged unseaworthiness being displaced by the presumptions of fact.

Decision of Court of Session ([1910] S. C. 231; 47 Sc. L. R. 177) reversed.

LINDSAY v. KLEIN, [1911] A. C. 194; 80 L. J. [P. C. 161; 104 L. T. 261; 48 Sc. L. R. 326—H. L. (Sc.)]

VI. DEMURRAGE.

See also No. 13, *supra*.

(a) Averaging Days.

[No paragraphs in this vol. of the Digest.]

(b) Colliery Guarantee.

24. *Incorporation in Charter-party—Exceptions—“Any other cause beyond my control”—Ejusdem generis.*—By a charter-party the plaintiff chartered the defendants' ship the *Aldgate* to proceed to Hull (Alexandra Dock) and there to take on board a cargo of coals “to be loaded in 120 hours on condition of usual colliery guarantee.” The colliery guarantee contained the following clause:—“Sundays, Saturdays, Bank Holidays, cavilling days, and colliery holidays excepted. Time not to count until after the said steamer is wholly unballasted and ready in dock to receive her entire cargo, strikes of pitmen or workmen, frosts or storms, and delays at spouts caused by stormy weather, and any accidents stopping the working, leading, or shipping of the said cargo, also restrictions or suspensions of labour, lock-outs, delay on the part of the railway company either in supplying wagons or leading the coals, or any other cause beyond my control, such stoppage occurring any time between the present date and actual completion of loading always excepted.” The *Aldgate* arrived at the Alexandra Dock, Hull, and gave notice of readiness to load by 9 a.m. on July 23rd, 1907. Owing, however, to the large number of ships which were waiting to load in turn before the *Aldgate*, she did not get to a berth under a tip until midnight, August 1st.

HELD—that the *Aldgate* was an arrived ship when she arrived in the dock and gave her notice of readiness to load on July 23rd at 9 a.m., and that the lay hours then commenced to run; that the exception in the colliery guarantee of “any other cause beyond my control” must be read *ejusdem generis* with the words that preceded them, and that the exception did not prevent the lay hours running against the plaintiff.

Monsen v. Macfarlane ([1895] 2 Q. B. 562) and *In re Richardsons and Samuel* ([1898] 1 Q. B. 261) followed. *Larsen v. Sylvestre* ([1908] A. C. 295) distinguished.

THORMAN v. DOWGATE STEAMSHIP CO., LD., [1910] 1 K. B. 410; 79 L. J. K. B. 287; 102 L. T. 242; 15 Com. Cas. 67; 11 Asp. M. C. 481—Hamilton, J.

VI. Demurrage—Continued.

(c) Commencement of Lay Days.

[No paragraphs in this vol. of the Digest.]

(d) Computation of Time.

[No paragraphs in this vol. of the Digest.]

(e) Custom of Port.

25. *Custom of Port for Discharge to be Done by Harbour Authority—Delay in Discharging—Liability of Charterers.*—By the terms of a charter-party a cargo of pitprops was to be discharged with the customary steamship dispatch as fast as the steamer could deliver during the ordinary working hours of the port, and it was provided that "should the steamer be detained beyond the time stipulated as above for discharging, demurrage shall be at 4d. per N.T.R. per day and *pro rata* for any part thereof." By the custom of the port the discharge of cargoes of pitprops was done by the harbour authority, and not by any stevedores to be named by the receivers of the cargo.

HELD—that the charterers were not liable for demurrage in respect of the detention of the vessel due to delay on the part of the harbour authority in discharging, the circumstances leading to the delay not being brought about by the charterers.

Weir v. Richardson (1897) 3 Com. Cas. 20) followed.

THE "KINGSLAND," [1911] P. 17; 80 L. J. P. [33; 105 L. T. 143; 27 T. L. R. 75; *sub nom.* DAVIES-EVANS *v.* LADOGA, LD. (THE "KINGSLAND"), 16 Com. Cas. 18—Div. Ct.

26. "Working Day"—"*Surf Day*"—*Construction of Charter-party.*—A charter-party, under which the plaintiffs' ship was chartered to carry a cargo of lumber from Vancouver to Iquique, provided that discharge was "to be given with dispatch according to the custom of the port of discharge, but not less than thirty 'mille' per working day." In an action by the plaintiffs against the holders of a bill of lading for the cargo, which incorporated the conditions of the charter-party, for demurrage of the ship through default of the defendants in not discharging at least thirty "mille" per working day, the defendants in their statement of defence pleaded with regard to a certain number of days in respect of which demurrage was claimed, in substance, as follows: that the plaintiffs or their agents knew, or ought to have known, the customs of the port of Iquique when they signed the charter-party; that the customary mode of discharge at Iquique is that ships lie in the bay, and are discharged by means of lighters, which carry the cargo from the ship to the beach; that the same number of days as before mentioned, out of the period between the commencement of the lay days at Iquique and the completion of the discharge of the ship, were "surf days," *i.e.*, days on which the surf on the beach at Iquique is so heavy that "the operation of unloading vessels in the bay is not only dangerous to life and property, but is in fact commercially impracticable"; that "by the established custom of the port of Iquique 'surf days' are

not working days, and persons who have engaged to take delivery of cargo from vessels in the bay are not bound to do so on 'surf days,' *i.e.*, days which appear as 'surf days' in the register book kept by the captain of the port at his office"; and that, by the custom of the port of Iquique and of the trade of importing lumber to that port, such days are not within the meaning of the term "working days" as used in such a charter-party as that in question.

An order having been made for the trial of the following question as a preliminary point of law, namely, whether the above-mentioned pleading (assuming for the purpose of the preliminary point of law only that the allegations of fact therein were true) constituted any defence to the plaintiffs' claim, on the trial of that question, Hamilton J., following the ruling of Walton J., in *Bennetts & Co. v. Brown* ([1908] 1 K. B. 490), gave judgment for the plaintiffs, on the ground that the alleged custom was too uncertain and unreasonable to be admissible to vary the ordinary meaning of the words "working day" in a charter-party. On appeal:—

HELD—that, on the assumption that the allegations of fact in the defence were true, the alleged custom was a valid custom, and the words "working day" in the charter-party must be interpreted in accordance with it, and that the defendants were therefore entitled to judgment.

Decision of Hamilton J., reversed.

BRITISH AND MEXICAN SHIPPING CO., LD. *v.* [LOCKETT BROTHERS & CO., LD., [1911] 1 K. B. 264; 80 L. J. K. B. 462; 103 L. T. 868; 16 Com. Cas. 75—C. A.

(f) Excepted Days.

See also No. 26, *supra*.

27. *Detention by Cranes or any Other Unavoidable Cause—Ejusdem generis.*—A clause in a charter-party stipulating for demurrage excepted from the hours named for loading and discharging, *inter alia*, "detention by cranes," "or any other unavoidable cause." In an action for demurrage at the instance of the shipowners against the charterers:—

HELD—(1) that the failure of the ship to get a berth and cranes at the port of loading, owing to a congestion of other ships in the port, was not "detention by cranes" within the meaning of the exception, and (2) that the words "other unavoidable cause" must be construed *ejusdem generis* with the previous enumerated exception, which fell under the class of a breakdown in the arrangements, and did not cover failure to obtain a berth through congestion of ships.

"ANCHURCH" STEAMSHIP CO. *v.* STINNIS, [1911] S. C. 1010; 48 Sc. L. R. 865—Ct. of Sess.

(g) Exception of Strikes, &c.

28. *Strike Clause*—"Workmen Essential to the Discharge of the Cargo"—"*Loading*" and "*Discharge*."—A charter-party contained a "strike" clause providing that "If the cargo cannot be discharged by reason of a strike or

VI. Demurrage—Continued.

lock-out of any class of workmen essential to the discharge of the cargo, the days of discharging shall not count during the continuance of such strike or lock-out." On the arrival of the ship at the port of discharge, a strike of carters was in existence, in consequence of which the docks had become congested; this condition of affairs rendered it impossible for the consignee to accept delivery of the cargo, there being neither space for the cargo in the docks, nor means of taking it away when tendered over the ship's rail.

HELD—that the carters in these circumstances were not a "class of workmen essential to the discharge" within the meaning of the clause.

HELD ALSO—that "discharge" is a joint act, necessitating co-operation on the part of the ship and the receiver of the cargo, and that the obligation of the ship under this term is fulfilled when its crew or its stevedore's men are in a position to offer, and do offer, delivery to the consignee over the ship's side.

LANGHAM STEAMSHIP CO., LD. *v.* GALLAGHER, [1911] 2 I. R. 348—Div. Ct., Ireland.

(h) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

VII. MARITIME LIENS.

See also No. 10, *supra*.

(a) Generally.

[No paragraphs in this vol. of the Digest.]

(b) Owner's Lien.

29. "Dead Freight"—*Unliquidated Damages.*—A lien for "dead freight" covers a claim for unliquidated damages for short loading.

McLean v. Fleming ((1871) L. R. 2 Sc. & Div. 128) followed; *Gray v. Carr* ((1871) L. R. 6 Q. B. 522) not followed.

KISH v. TAYLOR, [1910] 2 K. B. 309; 79 L. J. [K. B. 1113; 102 L. T. 910; 26 T. L. R. 504; 54 Sol. Jo. 565; 15 Com. Cas. 268; 11 Asp. M. C. 421—Walton, J.

See S. C., on appeal, No. 15, *supra*.

30. *Bill of Lading—Unsatisfied Freight Due by Limited Company—Further Shipment by Receiver and Manager of Company—Right of Shipowners to Exercise Lien as Against Receiver and Manager.*—For a number of years prior to 1909, I., C. and Co. had shipped beer to Malta to their agents for sale there by the appellants' line under bills of lading which contained a clause giving the shipowners a lien on the goods shipped not only for the freight due thereon, but also in respect of any previously unsatisfied freight due from shippers or consignees. In January, 1909, the respondent was appointed receiver and manager of I., C. and Co., and shortly thereafter shipping instructions were sent to the appellants in the

following terms:—"Please deliver ale as below charging to yours respectfully, Ind, Coope, and Co. By Arthur F. Whinney, Receiver and Manager, C.C.C." The address given for delivery of the ale was "Ind, Coope, and Co. (Limited), care of Turnbull, Junr., and Somerville, Strada Reale, Valetta, Malta."

In the reply thereto the amount of freight for the particular shipment was stated, and a bill of lading was sent in the same form as in previous shipments. The beer in question was shipped under that bill of lading. The appellants claimed to exercise a lien upon this particular shipment for unpaid freight in respect of previous shipments by L., C. and Co.

HELD (Lord Shaw and Lord Mersey dissenting)—that the defendants were not entitled to exercise a lien for the previously unsatisfied freight.

Decision of C. A. ([1910] 2 K. B. 813; 79 L. J. K. B. 1038; 103 L. T. 344; 26 T. L. R. 650; 54 Sol. Jo. 736; 15 Com. Cas. 316; 11 Asp. M. C. 507) affirmed.

MOSS STEAMSHIP CO., LD. *v.* WHINNEY, 105 [L. T. 305; 27 T. L. R. 513; 55 Sol. Jo. 631; 16 Com. Cas. 247—H. L.

VIII. BOTTOMRY.

[No paragraphs in this vol. of the Digest.]

IX. GENERAL AVERAGE.

[No paragraphs in this vol. of the Digest.]

X. RULES FOR PREVENTING COLLISIONS.

See also Nos. 63, 64, 65, *infra*.

(a) Fog.

31. *Failure to Hear Sound Signals—Bad Look-out—Regulations for Preventing Collisions at Sea*, 1897, art. 29.]—Two steam vessels, one the *C.* and the other the *I. B.*, came into collision in a thick fog. The *I. B.* on hearing the whistle of the other stopped her engines, and continued to sound her whistle regularly in accordance with the regulations. Those on the *C.* only heard the whistle of the *I. B.* once before she came into sight at a very short distance. In a damage action both vessels were held to blame, the *I. B.* for proceeding at an immoderate speed, the *C.* for bad look-out in not hearing the whistles of the other. The owners of the *C.* appealed, alleging that the look-out on their vessel was good and that the fog prevented them from hearing the whistle signals.

HELD—that the case made by the appellants that the whistle which was being regularly sounded on the *I. B.* could not be heard by reason of the fog was so improbable that the correct inference to draw from the facts was that those on the *C.* could not have been keeping a good look-out, and that their vessel was rightly held to be partly in fault for the collision.

Decision of Deane, J., affirmed.

THE "CURRAN," [1910] P. 184; 79 L. J. P. 83; [102 L. T. 640; 11 Asp. M. C. 449—C. A.

X. Rules for Preventing Collisions—Continued.

32. *Not Stopping Engines on Hearing Whistle—“Special Circumstances”*—Regulations for Preventing Collisions at Sea, arts. 16, 27.] A collision took place in a dense fog between the *Children's Hope*, a steam drifter, and the *Ariadne*, a steam trawler. The *Children's Hope* was stemming the ebb tide waiting for the fog to clear before going up the Humber to Grimsby. In order to stem the tide, which was running with the force of two or three knots, her engines were kept working slowly ahead, and she was duly sounding her whistle for fog. In these circumstances the whistle of the steam trawler *Ariadne* was heard on the port bow. The *Children's Hope* blew her whistle, but did not stop her engines, her excuse for not doing so being that there was a sailing vessel at anchor about 100 yards astern of her, and that the tide would have taken her on to that vessel had she stopped. Shortly afterwards the *Ariadne*, which was outward bound, loomed in sight about two ship's lengths off, and almost at once her stem struck the port bow of the *Children's Hope*, doing damage. It was admitted that the *Ariadne* was to blame, but it was contended that the *Children's Hope* was also to blame for a breach of art. 16 of the International Regulations in not stopping her engines on hearing the whistle of the *Ariadne* forward of her beam.

HELD—that there were no circumstances justifying the non-observance by the *Children's Hope* of the provisions of art. 16, and, therefore, that she was also to blame for the collision.

THE “*ARIADNE*,” 27 T. L. R. 304—Div. Ct.

33. *Rules Applicable during Fog—Regulations for Preventing Collisions at Sea, 1897, art. 19.*] Article 19 of the Regulations for Preventing Collisions at Sea does not apply in cases where the two vessels are not visible to each other by reason of fog. In cases of fog, only the fog rules apply, the other rules being only applicable where the vessels are in sight of each other.

THE “*KING*,” 27 T. L. R. 524—Deane, J.

(b) Generally.

See also No. 35, *infra*.

34. *Object and Effect of Regulations.*]—Per Moulton, L.J.—The object and effect of the Regulations for Preventing Collisions at Sea are to fix duties, and not to apportion legal liabilities.

THE “*SEACOMBE*,” THE “*DEVONSHIRE*,” 28 [T. L. R. 107—C. A.]

(c) Lights.

See also No. 42, *infra*.

35. *Compass Bearing—Regulations for Preventing Collisions at Sea, 1897, art. 17, Preliminary.*]—The defendants' steamship was proceeding to the eastward, near the Sandettie lightship in the North Sea, when those in charge observed, at a distance of some six miles, and

about ahead, a white light which proved to be the masthead light of the plaintiffs' steamship, which was proceeding on a converging course in the opposite direction. Assuming that that light, and a second white light, belonged to a fishing boat, those in charge of the defendants' vessel disregarded them, and, in the ordinary course of navigation, starboarded the helm for the next lightship, thereby bringing about a collision with the plaintiffs' vessel, which was properly porting to keep out of the way.

HELD—that (apart from other contributing causes, rendering both vessels to blame) the initial cause of the collision was neglect by those in charge of the defendants' vessel to comply with the directions contained in the preliminary to art. 17 of the regulations for preventing collisions at sea, as to “carefully watching the compass bearing of an approaching vessel,” for, if this had been done, it would have been ascertained that starboarding would involve risk of collision.

THE “*PRESIDENT LINCOLN*,” [1911] P. 248; [105 L. T. 442—Deane, J.]

36. *Steam Trawler “Engaged in Trawling”—Steamship Crossing—Effect of Exhibition of Triplex Light—Giving Way—Regulations for Preventing Collisions at Sea, 1897, arts. 9 (1906) (d) 1, 19, 21.*]—By art. 9 (d) 1 of the Regulations for Preventing Collisions at Sea, the exhibition of a triplex light is rendered compulsory on a steam vessel “engaged in trawling,” and an intimation is thereby given to a crossing steam vessel that as the trawler, by being incumbered, is unable to comply with art. 19 of the same regulations and keep out of the way, the steam vessel must give way (*The Grovehurst*, [1910] P. 316), but that the trawler will, under art. 21, keep her course and speed.

Where, therefore, a steam trawler was (as the Court found) duly exhibiting the triplex light, and those in charge did not stop on seeing a crossing steam vessel, causing imminent risk by suddenly porting when close to, and a collision occurred:

HELD—that the crossing steam vessel was alone to blame, for in the circumstances as a matter of seamanship, and under the rules as a matter of law, those in charge of the trawler were justified in keeping their course and speed.

THE “*RAGNHILD*,” [1911] P. 254; 105 L. T. [446—Deane, J.]

(d) Narrow Channel.

See also No. 43, *infra*.

37. *Upper Humber—Bend at Whitton Gas Float No. 3—No Positive Rule—Good Seamanship.*]—Although there is no positive rule with regard to the navigation of the narrow deep-water channel in the neighbourhood of Whitton gas float No. 3 in the Upper Humber, the practice, based on good seamanship, requires that those in charge of a steamship proceeding against the flood tide should avoid meeting another vessel at the gas float, and should,

X. Rules for Preventing Collisions—Continued.

therefore, wait until the vessel proceeding with the tide has rounded the bend.

THE "EZARDIAN," [1911] P. 92; 80 L. J. P. [81; 104 L. T. 400—Deane, J.

(e) Negligence.

See also Nos. 4, 35, *supra*.

38. Moring and Stationary Vessels—Presumption of Fault.—The presumption of fault on the part of a ship which runs into a vessel while moored is not a presumption of law but a presumption of fact, depending, *inter alia*, on the time of the collision, the place where it happened, and the existing weather conditions.

STEPHEN & SONS, LD. v. ALLAN LINE STEAMSHIP CO., LD., [1911] S. C. 836; 48 Sc. L. R. 745—Ct. of Sess.

(f) Sound Signals.

See also No. 31, *supra*, No. 55, *infra*.

39. Indicating Course—Regulations for Preventing Collisions at Sea, art. 28.—The words "taking any course authorised or required by these rules" in art. 28 of the Regulations for Preventing Collisions at Sea do not limit the application of the rules to the case of a course which, at the trial of a collision action, is found by the Court to have been authorised or required by the rules. The words have to be interpreted as including any course alleged to have been taken by a vessel acting so as to avoid immediate danger.

THE "HERO," [1911] P. 128; 80 L. J. P. 66; [105 L. T. 87; 27 T. L. R. 398—C. A.

(g) Tug and Tow.

See also No. 46, *infra*.

40. Negligence of Tug—Duty of Tug to set Course—Duty of Tow to follow Tug.—A hopper barge, which had a rudder but no motive power, when in tow of a tug came into collision with a lightship. The owners of the lightship brought an action against the owners of the tug and the owners of the tow for the damage they had sustained, alleging negligence in both tug and tow. Bigham, Pres., held that both tug and tow were to blame for the collision: the tug for not keeping more to that side of the channel which lay on her starboard side, the tow for not porting her helm sooner than she did to counteract the negligent course set by the tug. He also held that the contract of towage between the tug and tow which made those on the tug the servants of the tow owners did not touch the liability of the owners of the tug and tow to third parties.

HELD (Lord Robson dissenting)—that as a pure question of fact in the circumstances those on the hopper barge were not guilty of negligence in failing to port sooner than they did, as they were entitled to assume that those on the tug who were responsible for the navigation would set such a course as would take the hopper barge safely past the lightship, and they were not bound to act as though those on the tug would be negligent.

Decision of C. A. ([1910] P. 199; 79 L. J. P. 61; 102 L. T. 643; 11 Asp. M. C. 407) affirmed.

OWNERS OF LIGHTSHIP "COMET" v. [OWNERS OF THE "W. H. NO. 1," THE "W. H. NO. 1" AND THE "KNIGHT ERRANT," [1911] A. C. 30; 80 L. J. P. 22; 103 L. T. 677; 11 Asp. M. C. 497—H. L.

(h) Vessels Crossing.

See also, Nos. 33, 35, 36, *supra*.

41. Steamship—Steam Trawler Trawling—Obligation to Show Triplex Light—Duty of Steamship to Give Way—Regulations for Preventing Collisions at Sea—Arts. 9 (d) (1), 19, 21, and 27.—A steam trawler engaged in trawling, and showing the triplex light mentioned in art. 9 (d) (1), sighted the red side light of a steam vessel on her starboard side. The steam vessel kept her course and speed and collided with and sank the trawler, which had kept her course and speed until shortly before the collision, when she had stopped her engines.

In a damage action brought by the owners of the steam trawler against the owners of the steamship, the steamship was held alone to blame for keeping a bad look-out, and it was held that art. 19 did not apply to a steam trawler while engaged in trawling. The owners of the steamship, while admitting that they were partly to blame, appealed, alleging that the steam trawler was also to blame because she had enough way on to be under command, and so should have kept out of the way of a vessel approaching her on her starboard hand in accordance with art. 19.

HELD—that the steamship was alone to blame, for steamships were bound to keep clear of and give way to steam trawlers engaged in trawling and exhibiting the triplex light mentioned in art. 9 (d) (1).

Decision of Deane J., affirmed.

The *Craigellachie* ([1909] P. 1) disapproved.

The *Tweeddale* (1889) 14 P. D. 165 approved.

THE "GROVEHURST," [1910] P. 316; 79 L. J. P. [124; 103 L. T. 239; 11 Asp. M. C. 440—C. A.

42. Steam Drifter—Drifter unable to Manoeuvre by Reason of her Nets—Lights—Regulations for Preventing Collisions at Sea, arts. 9, 20, 27.—At the time of a collision which occurred between the *Z*, a sailing drift-net fishing vessel, and the *P*, a steam drift-net fishing vessel, the *Z* was under way towards her fishing ground, and the *P* was then, and had for some time been, engaged in shooting her nets. The *P*'s engines had been stopped, but she had her steam on and her engines ready; her speed then was about one knot. She carried the two white lights prescribed by art. 9 (b), but not in the direction prescribed by that article. Immediately before the collision the master of the *P*, seeing that the *Z* was keeping her course and speed—about four knots—ordered his engines full speed astern, but after a few revolutions the propeller became fouled with the nets and was absolutely stopped.

X. Rules for Preventing Collisions—Continued.

HELD—that as the *P.* could not manoeuvre under steam, by reason of her nets, without fouling her propeller, she was not bound by art. 20 to keep out of the way; that there were “special circumstances” within art. 27 which authorised a departure from art. 20 assuming it otherwise applied; that the direction of the *P.*’s lights, although wrong, could not by any possibility have caused or contributed to the collision; and that as the *Z.* ought to have kept out of the way, she was solely to blame.

THE “PITGAVENEY,” [1910] P. 215; 79 L. J. P. [65; 103 L. T. 47; 26 T. L. R. 473; 11 Asp. M. C. 429—Evans, Pres.

43. *Barry Dock Entrance—Crossing Rule—Application of Rule—Regulations for Preventing Collisions at Sea*, 1897, arts. 21, 23, 27.]—The plaintiffs’ steamship, bound to Barry Roads, Bristol Channel, for orders, passed the signal station without receiving them, and, proceeding on in an easterly direction towards Barry Dock, came into collision with the defendants’ steamship, passing out in a southerly direction from between the breakwaters. In the Court below the plaintiffs’ vessel was found alone to blame for coming in too close, and, by reversing, obstructing the passage out of the defendants’ steamship, when she ought, as a crossing vessel, under art. 21, to have kept her course and speed.

The plaintiffs appealed on the ground that the defendants’ vessel was also to blame for not, under art. 23, stopping or reversing sooner than she did:—

HELD (Buckley, L.J., dissenting)—that the defendants’ vessel was not, in the circumstances, to blame, for, assuming the crossing rule to apply, a departure from that rule was justified by art. 27 in order to avoid immediate danger, as, considering the narrowness of the entrance, the shallowness of the water, the set of the tide, and the position of the breakwaters, reversing sooner than she did might have put her ashore.

HELD by Buckley, L.J.—that the defendants’ vessel was also to blame, as she should have kept out of the way, and, for that purpose, might have stopped or reversed, under art. 23, sooner than she did, there being no danger of her going ashore.

Per Lord Alverstone, C.J.: *Quære* whether the Regulations for Preventing Collisions at Sea apply to the case of a vessel coming out of dock in circumstances similar to those under which the defendants’ vessel was placed.

THE “HAZELMERE,” [1911] P. 69; 80 L. J. P. [25; 103 L. T. 890; 11 Asp. M. C. 536—C. A.

44. *Duty to Keep Course and Speed—Duty to Give Way—Duty to Take Action to Avoid Collision—Regulations for Preventing Collisions at Sea*, 1910, arts. 19, 21, 22, 23, 27, 28.]—Where under the circumstances it is more than usually difficult for the officer in charge of a vessel, whose duty is to keep her course and speed, to decide the precise moment at which another vessel, whose duty is to give way,

should take action, he must be allowed some latitude and, when it is proved that he was carefully watching the giving-way vessel and endeavouring to act for the best at the right moment, he ought not to be held to blame for easing the speed of his vessel, although it is suggested afterwards that he had waited too long or acted too soon in doing so.

THE “HUNTSMAN,” 104 L. T. 464—Deane, J.

XI. COLLISION ACTIONS.

(a) Division of Loss.

45. *Both Vessels to Blame—Innocent Cargo Owners—Damages Recoverable.*]—The Admiralty rule as to division of loss where both ships which have been in collision are in fault, precluding the owners of cargo laden on one of the ships from recovering more than half their loss from the owners of the other ship, is a rule “hitherto in force in the Court of Admiralty” within the meaning of sect. 25 (9) of the Judicature Act, 1873, and accordingly prevails over any contrary common law rule.

The Milan (1861) Lush. 388 followed.

Decision of C. A. (*sub nom.* THE “DRUMLANRIG,” [1910] P. 249; 79 L. J. P. 100; 103 L. T. 359; 26 T. L. R. 578; 11 Asp. M. C. 151) affirmed.

OWNERS OF CARGO OF STEAMSHIP “TONGA-RIRO” v. OWNERS OF STEAMSHIP “DRUMLANRIG,” THE “DRUMLANRIG,” [1911] A. C. 16; 80 L. J. P. 9; 103 L. T. 773; 27 T. L. R. 146; 55 Sol. Jo. 138; 11 Asp. M. C. 520—H. L.

46. *Tug and Tow—Collision between Tug and other Vessel—Tug and Colliding Vessel in Fault—Tow not in Fault—Damages Recoverable by Tow-owners.*]—A barge while being towed by a tug which had complete control of the navigation suffered damage by a collision caused by the joint negligence of the tug and a third vessel. In an action by the owners of the barge against the owners of the third vessel:—

HELD—that there was no Admiralty rule in force which entitled the defendants to say that the plaintiffs could only recover a moiety of the damage they suffered by the collision, and that the plaintiffs were entitled to recover the whole of their loss from the defendants.

Per Moulton, L.J.—The object and effect of the regulations for preventing collisions are to fix duties and not to apportion legal liabilities.

Decision of Evans, Pres., in *The “Devonshire,”* (27 T. L. R. 490) affirmed (Vaughan Williams, L.J., dissenting).

THE “SEACOMBE”; THE “DEVONSHIRE,” 28 [T. L. R. 107; 56 Sol. Jo. 140—C. A.

(b) Limitation of Liability.

47. *Hopper Barge—“Ship”—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), ss. 503, 742.]—A hopper barge, used for dredging purposes, with a rudder but without means of propulsion, and when under way, towed to

XI. Collision Actions—Continued.

and from her destination, is a "ship" within the meaning of s. 742 of the Merchant Shipping Act, 1894, and her owners are entitled to limit their liability under s. 503 of the same Act.

The Mac ((1882) 7 P. D. 126) followed.

THE "MUDLARK," [1911] P. 116; 80 L. J. P. 117; 27 T. L. R. 385—Deane, J.

48. *Loss Occurring Through "Actual Fault or Privity" of Owner—Appointment of Incompetent Manager—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 503.]—A collision occurred between the *Fanny* and the *Lily Green* due to the former breaking adrift from her moorings owing to her cable being defective; and in a collision action the *Fanny* was held solely to blame. The plaintiff, the owner of the *Fanny*, now sought to limit his liability under sect. 503 of the Merchant Shipping Act, 1894. The plaintiff, who was an old man of 80 years of age, and had been confined to his house for eight years, had appointed his nephew, whom the Court found not to be a competent person, to act as his manager.

HELD—that the plaintiff was not entitled to limit his liability, inasmuch as he was in fault in not having appointed a competent person to see that the *Fanny* was properly equipped.

THE "FANNY," 27 T. L. R. 568—Deane, J.

49. *Collision in English Waters between English and Scottish Vessels—Writ issued in England by English Owners—Witnesses in England—Petition for Limitation of Liability by Scottish Owners—Jurisdiction of Court of Session—Forum non Conveniens—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 504.]—A collision occurred in English waters between a Scottish vessel and an English vessel, in which the Scottish vessel was admittedly in fault. The owners of the English vessel and the owners of its cargo, who were also English, issued writs in the English court against the owners of the Scottish vessel. The owners of the Scottish vessel thereupon presented a petition to the Court of Session for stay of actions, and limitation and distribution of liability. The owners of the cargo (while admitting the competency of the petition), objected to it on the ground of *forum non conveniens*, in respect of the fact that actions had already been instituted in England, and that all the claimants and all the witnesses were resident in England.

HELD—that, the competency of the petition being admitted, the objection must be repelled.

HAY v. JACKSON & Co. [1911] S. C. 876; 48 [Sc. L. R. 772—Ct. of Sess.

(c) Measure of Damages.

[No paragraphs in this vol. of the Digest.]

(d) Practice.

See also Nos. 45, 46, *supra*.

50. "Vessel"—*Landing-Stage—Preliminary Act—R. S. C., Ord. 19, r. 28; Ord. 72, r. 2; Appendix O.*—A landing-stage is not a "vessel" within the meaning of Ord. 19, r. 28, which directs preliminary acts to be filed in

actions for damage by collision between vessels. Any alleged practice in that respect which existed under the Admiralty Court Rules, 1859, has been abrogated by the annulment of those rules by the introductory rule and Appendix O. of the Rules of the Supreme Court, 1883, and is not saved by Ord. 72, r. 2.

THE "CRAIGHALL," [1910] P. 207; 79 L. J. P. 73; 103 L. T. 236; 11 Asp. M. C. 419—C. A.

51. *Preliminary Act—Collisions in River—Fixed Course—Pleading.*—In damage actions resulting from collisions in rivers in which the colliding vessels are on a fixed course as opposed to a course which has to be constantly changed, either the magnetic or the true course, and not the compass course, should be pleaded in the preliminary act.

THE "RIEVAULX ABBEY," 102 L. T. 864; 11 [Asp. M. C. 427—Evans, Pres.

52. *Action in Rem—Damages—Excess over Value of res—Foreign Defendants—Personal Liability—Appearance whether Voluntary.*—Where in a collision action *in rem* the defendants appear, not only to obtain the release of their ship, which has been arrested, upon giving sufficient bail, but also to contest their liability, and to endeavour to exonerate themselves from any claim for damages, and further to put forward a counter-claim, they submit themselves to the jurisdiction of the Court, and, if judgment is given against them, they are (apart from any question of limiting their liability under the provisions of the Merchant Shipping Act) personally liable for the full amount of the damages and not merely to the extent of the value of the *res* or of the bail representing the *res*.

An appearance entered in a collision action by foreign defendants not merely for the purpose of obtaining a release of property arrested, but also for the purpose of attempting to obtain a judgment freeing the defendants from all liability for the collision and for the purpose of trying to recover a judgment upon a counter-claim, is not an appearance only to save property in the hands of a foreign tribunal, nor an appearance under duress, but is a voluntary appearance.

THE "DUPLEIX," [1912] P. 8; 27 T. L. R. 577—Evans, Pres.

(e) Miscellaneous.

53. *Rendering Assistance after Collision—Reasonable Cause for Failure—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 422.]—Where a steam drift-net vessel in her unsuccessful endeavours to avoid a collision had fouled her propeller with her nets and thus rendered herself incapable of steaming, and the sea was too rough to lower a boat:—

HELD—that she had rebutted the presumption that she was to blame raised by sect. 422 of the Merchant Shipping Act, 1894.

THE "PITGAVERNEY," [1910] P. 215; 79 L. J. P. 65; 103 L. T. 47; 26 T. L. R. 473; 11 Asp. M. C. 429—Evans, Pres.

See S. C. No. 42, *supra*.

XI. Collision Actions—Continued.

54. Launch of Vessel—Obligations of those Managing Launch and of Vessels Navigating Near Launching Place.—The plaintiffs sued the defendants in respect of damage done to their ketch by the defendants' vessel while being launched. Proper notice of the intended launch had been given by the defendants, and the plaintiffs' captain had been notified that his ketch, which was lying near the launching place, was in a position of danger, and he was requested to move, but he did not do so. For the defendants to postpone the launch was attended with risk to a number of people and also to property.

HELD—that the defendants, being placed in a position in which they were obliged to choose between two evils, and having adopted the course involving that which they reasonably and honestly believed to be the lesser evil, were not guilty of negligence and were not liable to the plaintiffs.

Decision of Evans, Pres. (27 T. L. R. 481) reversed.

THE "HIGHLAND LOCH," [1911] P. 261; 80 [L. J. P. 121; 27 T. L. R. 510—C. A.]

55. Collision Due to Negligence of Two Independent Third Parties—Whether Negligence of One Directly Contributed to Collision.—Two vessels in the Clyde, the one proceeding up and the other down the river, found themselves, without any fault on their part, in such a position owing to the original faulty navigation of a tug and flotilla of barges that escape from collision was rendered impossible by the position of a cruiser then in course of construction on the river, and whose stern had been wrongfully projected into the navigable channel. In an action of damages brought by the owners of the colliding vessels against the owners of the tug and the builders of the cruiser:—

HELD—that as, but for the wrongful protrusion of the cruiser into the fairway of the river, there would not, or at least might not (notwithstanding the original fault of the tug), have been any collision, she (the cruiser) had directly contributed to the accident, and that the builders were liable jointly and severally with the owners of the tug.

ELLERMAN LINES, LD. v. CLYDE NAVIGATION [TRUSTEES, GLASGOW AND NEWPORT NEWS STEAMSHIP CO., LD. v. CLYDE NAVIGATION TRUSTEES, [1911] S. C. 122; 47 Sc. L. R. 44—Ct. of Sess.

XII. SALVAGE.

(a) Agreements for Salvage.

[No paragraphs in this vol. of the Digest.]

(b) Apportionment of Award.

[No paragraphs in this vol. of the Digest.]

(c) Basis of Valuation.

See also No. 59, *infra*.

56. Principles on which Court Acts—Appeal—Alteration of Amount.—In considering what is a proper amount to award as salvage, the Court,

in order to encourage the rendering of salvage services, will act generously, and will have regard not only to the market value of the services rendered, but will take into account the value of both ships, the amount of danger to which each is exposed, the delay caused to the salving vessel by reason of the salvage services, and the fact that the salving vessel is undertaking a service in which, if she fails, she gets nothing.

The Court of Appeal on a review of all the facts reduced a salvage award from £10,000 to £6,000, on the ground that the absence of danger had not been sufficiently recognised by the Court below.

THE "PORT HUNTER," [1910] P. 343; 80 [L. J. P. 1; 103 L. T. 550; 26 T. L. R. 610; 11 Asp. M. C. 492—C. A.]

(d) Derelicts.

[No paragraphs in this vol. of the Digest.]

(e) Generally.

57. No Real and Sensible Danger—Onus of Proof.—Before there can be a claim for salvage services, there must be an element of real and sensible danger or a reasonable apprehension of it on the part of the vessel against which the salvage is claimed; if there is an entire absence of this element, the claim of the salvor must fail. The onus of proving salvage services rests upon those who allege them.

THE "CALYX," 27 T. L. R. 166—Evans, Pres.

[Affirmed on Appeal, *Times*, June 15th, 1911—C. A.]

(f) Life Salvage.

[No paragraphs in this vol. of the Digest.]

(g) Practice.

58. Claim by Tug Engaged to Tow—Negligence of Tug not Pleaded.—In a salvage action brought by the owners of a tug engaged to tow the defendants' sailing ship, negligence not having been pleaded by the defendant owners of the tow, it was objected that the defendants could not rely on the want, if any, of skill and care on the part of those in charge of the tug.

HELD—that it is not necessary to plead negligence in order to defeat a salvage claim.

THE "MARÉCHAL SUCHET," [1911] P. 1; 80 [L. J. P. 51; 103 L. T. 848; 26 T. L. R. 660; 11 Asp. M. C. 553—Evans, Pres.]

See S. C., No. 59, *infra*.

(h) Towage.

59. Claim by Tug Engaged to Tow—Obligation under Towage Contract—Burden of Proof—Claim by other Tugs belonging to same Owners—Claim by Masters and Crews of Tugs.—Tug owners contracted with the agents of the owners of a large French sailing ship to provide a tug to tow her from Falmouth to London. After passing the Prince's Channel lightship, a strong south-westerly wind was encountered, and tug and tow drifted to leeward, the tow taking the ground on the West Shingles Sand. There she remained for several days, during which time the tug engaged to tow, and three other tugs belonging to the same owners, besides other tugs,

XII. Salvage—Continued.

lifeboats, and a number of boatmen, came to her assistance, and on the fourth day the vessel came off.

HELD—that the claims of the owners, masters and crew of the tug towing under the contract must be rejected as her owners had failed to prove (the burden of proof being upon them) that they had supplied a tug efficient for the purpose, or that the change from towage to salvage became necessary by reason of special circumstances in the nature of *vis major* or inevitable accident, and not by reason of the inefficiency of the tug, or want of skill and care on the part of the master and crew.

HELD FURTHER—that for any services rendered by the other three tugs belonging to the same owners, the owners were not entitled to salvage as they had failed in the performance of their contract to tow, but :—

HELD—that this did not bar the claims of the masters and crews of the three last-mentioned tugs to an award for “engaged” service, rendered in the salvage operations.

THE “MARÉCHAL SUCHET,” [1911] P. 1; 80 [L. J. P. 51; 103 L. T. 848; 26 T. L. R. 660; 11 Asp. M. C. 553—Evans, Pres.

XIII. TOWAGE CONTRACTS.

See also Nos. 40, 58, 59, *supra*.

60. Salvage Action—Claim by Tug Engaged to Tow—Obligations under Towage Contract—Counter-claim for Breach of Towage Contract.—The Court will carefully scrutinise a claim for salvage by a tug which has been engaged to tow the vessel in respect of which the salvage claim is made. It is essential in the public interest that the towage contract should not be easily set aside, and a salvage service substituted for it. Where a claim for salvage services is put forward by a tug which has been engaged to tow the vessel in respect of which the salvage claim is made and which has stranded while in tow, the burden of proof is upon the tug owners, and, in order to succeed, they must show that they were not wanting in the performance of the obligations resting upon them under the towage contracts, and they must also account for the stranding by showing something like *vis major* or an inevitable accident. The very fact that the tug is unable to tow the vessel is evidence that she was inefficient, or that there was inefficiency or want of care or skill on the part of her master or crew.

The defendants, in a salvage action brought by the owners of a tug engaged to tow the defendants' sailing ship, counterclaimed against the owners of the tug under the contract of towage for damages in respect of the stranding of the tow.

HELD—that special conditions in the contract of towage—although they could not enure to the benefit of the plaintiffs in the salvage claim—did in the circumstances afford a defence to the counter-claim for damages for breach of contract.

THE “MARÉCHAL SUCHET,” [1911] P. 1; 80 [L. J. P. 51; 103 L. T. 848; 26 T. L. R. 660; 11 Asp. M. C. 553—Evans, Pres.

See S. C., No. 59, *supra*.

61. Sufficiency of Towing Gear—Exception Clause—Implied Warranty of Fitness—Exemptions applying only after Commencement of Towage.—The defendants, who were tug owners, undertook to tow the plaintiffs' vessel from Birkenhead to the Canada Dock, Liverpool. The contract of towage contained the following clause :—“The tug owners are not to be responsible for any damage to the ship they have contracted to tow arising from any perils or accidents of the seas, rivers, or navigation, collision, stranding, or arising from towing gear (including consequence of defect therein or damage thereto), and whether the perils or things above mentioned or the loss or injury therefrom be occasioned by the negligence, default, error in judgment of the pilot, master, officers, engineers, crew, or other servants of the tug owners.”

HELD—that the above clause did not exempt the defendants in respect of damage to the plaintiffs' ship arising from defects or inefficiency existing in the tug before the towage began.

HELD FURTHER (Vaughan Williams, L.J., dissenting)—that the words “towing gear” did not include the rivets, or attachments, between the gear and the bulkhead, and, therefore, that the defective condition of the rivets attaching the towing gear of the tug to her bunker casing, which caused the accident, was not within the words of the clause.

Decision of Evans, Pres. ([1911] P. 23; 27 T. L. R. 52) affirmed.

THE “WEST COCK,” [1911] P. 208; 80 L. J. P. [97; 104 L. T. 736; 27 T. L. R. 301; 55 Sol. Jo. 329—C. A.

62. Sinking of Tow by Collision—Right of Tug Owner to Recover from Colliding Vessel for Loss of Towage Remuneration—Remoteness of Damages.—The plaintiffs' tug was engaged in towing a ship from Antwerp to Port Talbot, under a contract which contained the clause, “Sea towage interrupted by accident to be paid *pro rata* of distance towed.” During the towage, the defendant's vessel, by the negligence of those on board, collided with and sank the tow. The tug was uninjured. The plaintiffs sued the defendant to recover the amount of towage remuneration so lost.

HELD—that the damage sustained by the plaintiffs by reason of the towage contract being no longer performable, in consequence of the sinking of the tow, gave the plaintiffs no cause of action against the defendant.

Cattle v. Stockton Waterworks Co. ((1875) L. R. 10 Q. B. 453) followed.

LA SOCIÉTÉ ANONYME DE REMORQUAGE À [HÉLICE *v.* BENNETTS, [1911] 1 K. B. 243; 80 L. J. K. B. 228; 27 T. L. R. 77; 16 Com. Cas. 24—Hamilton, J.

XIV. PILOTAGE.

(a) Authority of Pilot.

[No paragraphs in this vol. of the Digest.]

(b) Defence of Compulsory Pilotage.

63. Collision—Necessity for Master being on Bridge—Thames Rules, r. 14.—Rule 14 of

XIV. Pilotage—Continued.

the Thames Rules does not require the presence of the master on the paddle-box or bridge at all times and in all circumstances when his vessel is in charge of a compulsory pilot.

THE "UMSINGA," [1911] P. 231; 80 L. J. P. [90; 27 T. L. R. 439—Evans, Pres.

64. Collision—Fault of Pilot—Burden of Proving Fault—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 633.]—A steamship on her way up the Clyde in charge of a compulsory pilot collided with and injured another steamship moored to a wharf in the river. The collision took place when it was very dark and when there was a very thick fog. In an action of damages at the instance of the injured vessel:—

HELD—that the pursuers had failed to prove that the collision was caused by the fault of the defenders or of anyone for whom they were responsible, and defenders *assoluted*.

HELD FURTHER—that the defenders were not bound in order to come within the statutory exemption under sect. 633 of the Merchant Shipping Act, 1894, to prove any specific fault on the part of the pilot, but that it was enough for them to show that the vessel was under the pilot's orders, and that his orders were obeyed.

STEPHEN & SONS, LD. *v.* ALLAN LINE STEAM-SHIP CO., LD., [1911] S. C. 836; 48 Sc. L. R. 745—Ct. of Sess.

(c) Exempted Ships.

[No paragraphs in this vol. of the Digest.]

(d) Limits of Compulsory Pilotage.

65. Port of London.]—The *Umsinga*, outward bound for Beira, East Africa, and carrying passengers, collided with a barge in Bugsby's Reach in the River Thames. She was at the time in charge of a Trinity House licensed pilot.

HELD—that pilotage is compulsory in the Thames, and that as the collision was solely due to the fault of the pilot, the owners of the *Umsinga* were not liable to the owners of the barge.

The "*Hankow*" ((1879) 4 P. D. 197) approved and followed.

THE "UMSINGA," [1911] P. 234; 80 L. J. P. [90; 27 T. L. R. 470—Evans, Pres.

(e) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

XV. HARBOURS AND DOCKS.**(a) Authority of Harbour Master.**

[No paragraphs in this vol. of the Digest.]

(b) Dues.

[No paragraphs in this vol. of the Digest.]

(c) Liability of Harbour Authority.

[No paragraphs in this vol. of the Digest.]

(d) Liability of Wharf Owner.

[No paragraphs in this vol. of the Digest.]

(e) Miscellaneous.

66. Portland Harbour—Soil Vested in Crown—Coal Hulk Permanently Anchored—Navigation—Trespass.]—The title to the soil of Portland Harbour is vested in the Crown, subject only to the public rights of navigation and fishing. A coal hulk which is permanently moored in the harbour is not engaged in navigation, and a right to moor it permanently in the harbour cannot be claimed as a right of navigation.

R. v. Russell ((1827) 6 B. & C. 566) disapproved.

Decision of Lawrence, J. (102 L. T. 76; 26 T. L. R. 310; 11 Asp. M. C. 348) affirmed.

DENABY AND CADEBY MAIN COLLIERIES, LD. *v.* ANSON, [1911] 1 K. B. 171; 80 L. J. K. B. 320; 103 L. T. 349; 26 T. L. R. 667; 54 Sol. Jo. 748; 11 Asp. M. C. 471—C. A.

XVI. MISCELLANEOUS SHIPPING REGULATIONS.

[No paragraphs in this vol. of the Digest.]

SHOP HOURS REGULATIONS.

See LOCAL GOVERNMENT: PUBLIC HEALTH.

SHOWS.

See THEATRES.

SLANDER.

See LIBEL AND SLANDER.

SLANDER OF TITLE.

See TORTS.

SLAUGHTER-HOUSE.

See PUBLIC HEALTH.

SMALL DWELLINGS.

See LOCAL GOVERNMENT.

SMALL HOLDINGS AND ALLOTMENTS.

See COMPULSORY PURCHASE, No. 2.

SMUGGLING.

See REVENUE.

SOCIETIES.

See CLUBS; FRIENDLY SOCIETIES;
INDUSTRIAL AND PROVIDENT
SOCIETIES.

SOLICITORS.

	COL.
I. IN GENERAL	595
II. AUTHORITY	596
III. CERTIFICATE	596
[No paragraphs in this vol. of the Digest.]	
IV. CONFIDENTIAL RELATION	596
V. COSTS.	
(a) General	596
[No paragraphs in this vol. of the Digest.]	
(b) Bills of Costs	596
(c) Charging Order	597
(d) Taxation	599
(e) Solicitors' Remuneration Act, 1881	600
[No paragraphs in this vol. of the Digest.]	
VI. COVENANT IN RESTRAINT OF TRADE	600
VII. LIABILITY	601
VIII. LIEN	601
IX. MISCONDUCT	602
X. PRACTICE	603
[No paragraph in this vol. of the Digest.]	
XI. SOLICITOR TRUSTEE	604
XII. UNDERTAKINGS	604
XIII. UNQUALIFIED PERSONS	604
[No paragraphs in this vol. of the Digest.]	

See also COUNTY COURTS, No. 1; MASTER
AND SERVANT, No. 48; SCOTTISH
LAW, No. 5.

I. IN GENERAL.

1. *Commissioner for Oaths—Registration of Instrument—Disqualification of Solicitor to any Party to the Proceeding—"Proceeding"—Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 1 (2), (3).—*The disqualifying provision in sub-sect. 3 of sect. 1 of the Commissioners for Oaths Act, 1889, which prohibits a commissioner for oaths from exercising any of the powers given by the section "in any proceeding in which he is solicitor to any of the parties to the proceeding, or clerk to any such solicitor, or in which he is interested," is not limited to proceedings in Court, but is co-extensive with the substantive provision in sub-sect. 2, which empowers a commissioner for oaths to administer any oath or take any affidavit for the purposes of any Court

or matter in England, including (*inter alia*) matters relating to the registration of any instrument.

IN RE BAGLEY, [1911] 1 K. B. 317; 80 L. J. [K. B. 168; 103 L. T. 470; 55 Sol. Jo. 48; 18 Manson, 1—C. A.]

See S. C. BANKRUPTCY, No. 14.

II. AUTHORITY.

See No. 16, *infra*; HUSBAND AND WIFE,
No. 10; TRUSTS, No. 5.

III. CERTIFICATE.

[No paragraphs in this vol. of the Digest.]

IV. CONFIDENTIAL RELATION.

See also HUSBAND AND WIFE, No. 7.

2. *Taking Conveyance in Own Name—Custody of Deeds—Managing Clerk—Sphere of Business.*—*Per* Farwell, L.J.—No client can assume that it is within his or her solicitor's clerk's duty to advise on anything beyond the usual business of a solicitor, or to take a conveyance into his own name for the purpose of realisation and investing in Stock Exchange securities to be chosen by him.

Per Farwell, L.J.—Solicitors and bankers who accept the custody of their clients' and customers' deeds and securities, whether gratuitously or for reward, are not insurers, but contract only to use reasonable care and diligence.

LLOYD v. GRACE SMITH & Co., [1911] 2 K. B. [489; 80 L. J. K. B. 959; 104 L. T. 789; 27 T. L. R. 409; 55 Sol. Jo. 461—C. A.]

See S. C. No. 17, *infra*.

V. COSTS.

See also No. 25, *infra*; HUSBAND AND
WIFE, No. 16; PRACTICE, XXIII.

(a) General.

[No paragraphs in this vol. of the Digest.]

(b) Bills of Costs.

3. *Jurisdiction—Order made in Chancery Division—Solicitor—Non-Delivery of Bill of Costs—Motion for Attachment—Costs of Motion—Recovery in King's Bench Division—R. S. C., Ord. 42, rr. 3, 24.*—An action is maintainable in the King's Bench Division to enforce an order made in the Chancery Division that the defendant, a solicitor and the plaintiff's London agent, should pay to the plaintiff the costs of a motion for attachment for contempt of Court in not delivering a bill of costs previously ordered by the Court to be delivered.

In re Freston ((1883) 11 Q. B. D. 545) considered.

Decision of Darling, J. ([1910] 2 K. B. 9; 79 L. J. K. B. 621) affirmed.

SELDON v. WILDE, [1911] 1 K. B. 701; 80 L. J. [K. B. 282; 104 L. T. 194—C. A.]

V. Costs—Continued.

4. *Expiration of One Month after Delivery—Action Brought for Fees—Sent by the Post—Computation of Time—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*—Under sect. 37 of the Solicitors Act, 1843, which directs that no solicitor shall commence an action for the recovery of his fees for business done by him until the expiration of one month after he shall have delivered his bill of costs to the party to be charged, the month is to be a clear calendar month reckoned exclusively of the days on which the bill is delivered and the action brought.

Where the bill is sent by the post to the person to be charged, time will run from the day when the bill would be delivered in ordinary course of post. The month will be reckoned exclusively of that day and of the day on which the action is brought.

BROWNE v. BLACK, [1911] 1 K. B. 975; 80 [L. J. K. B. 758; 104 L. T. 392; 27 T. L. R. 314; 55 Sol. Jo. 350—Div. Ct.

AFFIRMED ON APPEAL (Buckley, L.J., dissenting)—[1911] W. N. 253; 28 T. L. R. 119; 56 Sol. Jo. 144—C. A.

5. *Bill of Costs Increased by Error—Taring off more than One-Sixth—Liability for Costs of Taxation—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*—Where a solicitor has, *bonâ fide* and by a palpable error, increased his bill of costs by including disbursements which have been recovered, and where the disallowance of these items has had the effect of causing the amount taxed off to exceed one-sixth, the Court has a discretion to relieve the solicitor from the obligation to pay the costs of taxation.

IN RE RICHARDS, [1912] 1 Ch. 19; *sub nom.* [IN RE R., A SOLICITOR, 56 Sol. Jo. 74—Parker, J.

(c) Charging Order.

6. *Property Recovered or Preserved—Proceeding—Sale—Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.*—In a creditor's administration action the usual decree was made on July 1st, 1907. On January 26th, 1910, the plaintiff entered into a conditional contract for the sale of an outstanding piece of real estate for £381; the defendant, the surviving executor, opposed the confirmation of this contract as being at an undervalue, and the real estate was ordered to be sold with the approbation of the judge. At this sale, of which the surviving defendant had the conduct, the property fetched £400, which was paid into Court. On January 23rd, 1911, on further consideration, an order was made that a sum of £64 found due from the defendants the executors should be set off against their costs, and the residue of their costs and those of the plaintiff should be paid out of the fund in Court. The defendants' solicitor now applied for a charging order for his costs, under the Solicitors Act, 1860, s. 28, on the fund in Court as being property recovered or preserved in the proceedings within the meaning of the Act:—

HELD—that the sale was a proceeding within the meaning of the section, and that the money in Court must be regarded as property recovered in that proceeding, though in fact nothing more was recovered, having regard to the cost of the sale ordered, than would have been received under the conditional contract.

BUT HELD, that the order was in the discretion of the Court, and the Court would not make it in this case, because the order on further consideration practically ordered the same costs as those for which the solicitor asked for a charge to be paid to his client out of the fund.

IN RE COCKRELL'S ESTATE, [1911] 2 Ch. 318; [80 L. J. Ch. 606; *sub nom.* IN RE COCKRELL, PINKEY v. COCKRELL, 105 L. T. 368—Neville, J.

AFFIRMED ON APPEAL, [1912] 1 Ch. 23; [1911] W. N. 222; 105 L. T. 662—C. A.

7. *Property Recovered or Preserved—Judgment for Costs—Cross-judgments—Legal Practitioners (Ireland) Act, 1876 (39 & 40 Vict. c. 44), s. 3—R. S. C. (I.), Ord. 65, r. 18.*—The defendant having obtained in this action judgment with costs against the plaintiff, and the plaintiff having subsequently recovered judgment with costs in an action for rent against the defendant, on which execution was issued, and a return of *nulla bona* made, defendant's solicitor, who had obtained for defendant the said judgment with costs, applied for a charging order on such costs under the Legal Practitioners (Ireland) Act, 1876.

HELD—that such costs were "property recovered" within the statute in respect of which an order of charge could be made.

JOHNSTONE v. MCKENZIE, [1911] 2 I. R. 118; [45 I. L. T. 49—Div. Ct., Ireland.

8. *Scheme of Arrangement—Priority of Charging Order—Legal Practitioners (Ireland) Act, 1876 (39 & 40 Vict. c. 44), s. 3.*—The solicitor for a defendant in an action for possession in which the defendant obtained judgment for costs obtained a charging order for his costs upon the judgment under sect. 3 of the Legal Practitioners (Ireland) Act, 1876, with liberty to issue execution against the plaintiff. At the date of the charging order the plaintiff in the action had obtained the protection of the Court of Bankruptcy, and subsequently carried an arrangement to pay 7s. in the £. The defendant's solicitor claimed to be entitled to be paid his costs in full.

HELD—that the solicitor was only entitled to prove in the arrangement and to get a composition on the amount of his costs.

IN RE J., AN ARRANGING DEBTOR, 45 I. L. T. [143—Dodd, J., Ireland.

9. *Action in Scotland by Company Registered in England—Fund Recovered not within Control of Scottish Court—Jurisdiction—Law Agents and Notaries Public (Scotland) Act, 1891 (54 & 55 Vict. c. 30), s. 6.*—A law agent who had conducted an action in Scotland on

V. Costs—Continued.

behalf of a company registered in England, presented, after decree had been extracted, and after the company had gone into liquidation, a petition for a charging order, under the Law Agents and Notaries Public (Scotland) Act, 1891, s. 6, on the fund which had been recovered by the action, and which had been paid over to the liquidator in England.

HELD—(1) that the Court had power to grant the order, though neither the company nor the liquidator were subject to the jurisdiction, and (2) that the voluntary liquidation was no bar to the granting of the order.

PHILIP v. WILSON, 48 Sc. L. R. 947—Ct. of [Sess.

(d) Taxation.

See also No. 5, *supra*; BANKRUPTCY, No. 19.

10. Non-Contentious Business—Originating Summons—Jurisdiction—Proper Officer—District Registrar of Manchester—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37—R. S. C., Ord. 35, r. 6A; Ord. 61; r. 1B; Ord. 65, r. 26A; Ord. 71, r. 1.—Application having been made by originating summons in the Manchester District Registry, before the amendment in July, 1910, of Ord. 35, r. 6A, to a judge of the K. B. D. sitting at Manchester for an order referring the bill of costs of a solicitor for non-contentious business to the district registrar for taxation:—

HELD—that although an originating summons was the proper form in which to make the application and a judge of the K. B. D. had power to refer the bill for taxation, yet the district registrar was not the "proper officer" to whom a bill for non-contentious business could be referred for taxation within sect. 37 of the Solicitors Act, 1843, and that the bill must be taxed by a Master of the Supreme Court.

IN RE STEAD, [1910] 2 K. B. 713; 80 L. J. K. B. [1; 103 L. T. 12; 54 Sol. Jo. 618—C. A.

AFFIRMED ON APPEAL, *sub nom.* STEAD v. SMITH, [1911] A. C. 688; 81 L. J. K. B. 68; 105 L. T. 120; 55 Sol. Jo. 616—H. L.

11. Taxation as Between Solicitor and Client—Party—R. S. C., Ord. 65, r. 27 (39) (41).—

In taxation as between solicitor and client, a solicitor or a firm of solicitors may be entitled to be regarded as a "party" within Ord. 65, r. 27 (39), and may be entitled to a review of taxation in his or their own interests, as, for instance, where he or they have a lien for costs on a fund.

IN RE CLARKE'S SETTLEMENT FUND, [1911] [W. N. 39; 55 Sol. Jo. 293—Joyce, J.

12. Bankruptcy of Client—Undertaking by Solicitor not to Prove.—When a client who has obtained an order to tax his solicitor's bill of costs becomes bankrupt, his assignees, if the solicitor undertakes not to prove in the bankruptcy for the costs, cannot continue the taxation without giving an undertaking to pay the taxed amount of the bill.

IN RE MERRICK, EX PARTE JOYCE, [1911] 1 [I. R. 279—C. A., Ireland.

13. Taxation after Payment—Special Circumstances—Bankruptcy of Client—Costs Settled and Paid before Bankruptcy—Bill Furnished to Assignees at their Request—Expiration of more than Twelve Months—Attorneys and Solicitors (Ireland) Act, 1849 (12 & 13 Vict. c. 53), s. 2.—A solicitor, without delivering any bill of costs, agreed with his client to accept, and was paid by him, a certain sum in payment for professional services rendered. Some days subsequently the client was adjudicated a bankrupt. At the request of the assignees in bankruptcy the solicitor furnished bills of costs. More than twelve months after the said bills had been furnished the assignees applied that they should be referred for taxation.

HELD—that the assignees were not entitled to an order calling upon the solicitor to tax his costs, as neither the non-delivery of a bill of costs to the client nor an allegation made in an affidavit that some of the items were not chargeable under the schedule of fees were "special circumstances" within sect. 2 of the Attorneys and Solicitors (Ireland) Act, 1849.

IN RE SEALY, 45 I. L. T. 1—C. A., Ireland.

(e) Solicitors' Remuneration Act, 1881.

[No paragraphs in this vol. of the Digest.]

VI. COVENANT IN RESTRAINT OF TRADE.

14. Agreement by Clerk not to Practise—Prohibited Area—Office Outside Area—Writing to Client Within Area.—The defendant on entering the plaintiff's service agreed that he would not at any time carry on the business of a solicitor within a certain area. After leaving the plaintiff's service the defendant opened an office outside the prohibited area, and on one occasion was consulted at his office by a former client of the plaintiffs who lived within the area.

HELD—that this was not a breach of the agreement.

Decision of *Eve, J.* ([1910] W. N. 269; 55 Sol. Jo. 126) reversed.

WOODBRIDGE & SONS v. BELLAMY, [1911] [1 Ch. 326; 80 L. J. Ch. 265; 55 Sol. Jo. 204—C. A.

15. Agreement not to Practise nor Act as Solicitor—Single Act within Prohibited Area—Letters to Persons within Area.—The defendant had entered the employment of the plaintiff, a solicitor, under an agreement which prohibited him from practising or acting as a solicitor, solicitor's clerk, or conveyancer within a certain area during, and for a certain time after leaving, the employment. The defendant, after the employment was determined, did one act which was the act of a solicitor within the area, and wrote several solicitor's letters to persons within the area.

HELD—that the covenant must be construed to mean substantially acting as a solicitor, and that there had been no breach of the agreement, and that an injunction ought not to be granted.

FREEMAN v. FOX, 55 Sol. Jo. 650—Warring-ton, J.

VII. LIABILITY.

16. Retainer to Conduct Defence to an Action — Non-existing Corporation—Implied Warranty of Authority — Liability of Solicitor to Pay Plaintiff's Costs.—A solicitor warrants the authority which he claims as representing his client. If, therefore, he enters an appearance in an action on behalf of a corporation, he warrants the existence of the corporation, and is personally liable to pay the costs thrown away if the corporation should prove to be non-existent. In such a case it is not a good defence that though the corporation is non-existent the solicitor received instructions on behalf of individuals who were carrying on business under the style and in the name of the non-existent corporation.

SIMMONS v. LIBERAL OPINION, LD., IN RE [DUNN, [1911] 1 K. B. 966; 80 L. J. K. B. 617; 104 L. T. 264; 27 T. L. R. 278; 55 Sol. Jo. 315—C. A.]

17. Managing Clerk Taking Conveyance from Client in his Own Name and Fraudulently Disposing of Property—Liability of Solicitor.—The plaintiff took the deeds of her property to the office of the defendant, who was a solicitor, and consulted S., the defendant's managing clerk, as to its value. S. asked the plaintiff what other property she had, told her she got too little for it, and volunteered advice that she should bring all her deeds next day so that he might advise what best to do. He then had conveyances to himself prepared, both of her land and a mortgage which she had, and when she came next day he procured her execution of both these documents, by which the legal estate was conveyed to himself. The plaintiff knew she was conveying to S., intending it as a step towards the sale and realisation by him, which he had advised and she desired to make, of her property in order that he might invest the proceeds in shares of companies. S. having disposed of the property for his own purposes, the plaintiff sought to make the defendant liable for the loss she had sustained. The defendant was ignorant of the whole transaction until after the discovery of S.'s fraud; the plaintiff believed throughout that she was a client of the defendant.

Held—that the defendant was not liable, inasmuch as what was done by S. was not within the scope of his duties as the defendant's managing clerk.

LEOYD v. GRACE SMITH & CO., [1911] 2 K. B. [489; 80 L. J. K. B. 959; 104 L. T. 789; 27 T. L. R. 409; 55 Sol. Jo. 461—C. A.]

VIII. LIEN.

18. Mortgage—Retainer by Trustee for Debenture-holders — Trust Deed — Costs incurred prior to Execution of Deed—Claim by Debenture-holder.—A company determined to issue mortgage debentures to be secured by a trust deed, and a trustee was proposed. The proposed trustee, who on the execution of the trust deed became the trustee for the debenture-holders, retained a solicitor to act for

him in connection with the trust (the company being represented by another solicitor), and under this retainer the solicitor investigated the title of the trust property and approved the trust deed on behalf of the trustee:—

Held—that the solicitor was entitled, both as against the trustee and as against the debenture-holders, to a lien on the trust deed for all costs properly incurred in relation to the trust, notwithstanding that they were incurred before the execution of the deed.

Decision of Eady, J. (104 L. T. 249; 55 Sol. Jo. 349) affirmed.

IN RE DEE ESTATES, LD., WRIGHT v. DEE [ESTATES, LD., [1911] 2 Ch. 85; 80 L. J. Ch. 461; 104 L. T. 903; 55 Sol. Jo. 424; 18 Manson, 247—C. A.]

19. Property Recovered—Arbitration—Claim by Company—Winding-up—Continuance of Arbitration—Compromise—Costs Prior to Liquidation—Costs of Establishing Retainer by Liquidators.—A limited company employed a solicitor to establish a claim in an arbitration. Pending the arbitration the company went into liquidation, and, shortly after, the solicitor with the sanction of both liquidators compromised the claim for £29 which was paid to him and credited to the liquidators.

Held, that as the £29 was recovered by the exertions of the solicitor in the arbitration he had a common law lien thereon for his costs of recovery, including the costs incurred prior to the liquidation.

Jones v. Turnbull ((1837) 2 M. & W. 601), Emden v. Certe ((1881) 19 Ch. D. 311) and Guy v. Churchill ((1887) 35 Ch. D. 489) (bankruptcy cases); and In re Massey ((1870) L. R. 9 Eq. 367) and In re Born ([1900] 2 Ch. 433) (company cases) applied.

Held also—that the solicitor's lien extended to the costs of establishing his retainer against one of the liquidators who disputed it.

In re Hill ((1886) 33 Ch. D. 266) applied.

IN RE METER CASES, LD., [1911] 2 Ch. 557; [105 L. T. 572; 56 Sol. Jo. 36—Eady, J.]

IX. MISCONDUCT.

See also TRUSTS, Nos. 5, 6.

20. Professional Misconduct—Abetting the Publication of False Information purporting to come from Convict under Sentence of Death—Solicitors' Act, 1888 (51 & 52 Vict. c. 65), s. 13.—The jurisdiction of the Court to punish a solicitor for misconduct is not confined to cases in which he may have been acting in the course of his professional practice; it has power to punish him if he has been guilty of dishonourable conduct which makes him unfit to be a member of an honourable profession and an officer of the Court, or which would be sufficient to prevent his admission as a solicitor.

The respondent, in the capacity of legal adviser to a convict under sentence of death,

IX. MISCONDUCT—Continued.

was permitted to visit the convict in prison. In abuse of the privilege thus extended to him he aided and abetted the editor of a newspaper to disseminate in his journal false information in the form of a letter purporting to emanate from and to be written by the convict although, as the respondent knew, no such letter in fact existed; and he further published or permitted to be published other false statements relating to the same matter knowing them to be false.

HELD, that the respondent had been guilty of professional misconduct within the meaning of the Solicitors Act, 1888.

IN RE A SOLICITOR, EX PARTE LAW SOCIETY
[No. 25), 27 T. L. R. 535; 55 Sol. Jo. 670
—Div. Ct.]

21. Attempt to Obtain Information from Books of a Company—Offer of Remuneration to Company's Servant.—A solicitor who endeavours to obtain information as to unclaimed stocks and dividends of a company by an offer to remunerate a subordinate servant of that company, in return for the information desired, is guilty of professional misconduct.

IN RE C., A SOLICITOR, EX PARTE LAW SOCIETY,
[SOCIETY, 56 Sol. Jo. 93—Div. Ct.]

22. Interest in Debt-collecting Company—Company Adjunct to Solicitor's Business—Remuneration by Percentage of Debts Recovered—ChamPERTY.—It is professional misconduct for a solicitor to carry on a debt-collecting company as an adjunct to his practice as a solicitor, and the receipt by him, through the agency of such company, of a percentage upon debts recovered is champerious.

IN RE A SOLICITOR, EX PARTE LAW SOCIETY.
[1911] W. N. 227; 28 T. L. R. 50; 56 Sol. Jo. 92—Div. Ct.]

23. Mixing Client's Money with Solicitor's in Banking Account.—Observations by Darling, J., as to the practice of a solicitor mixing up the money of a client with his own money.

IN RE A SOLICITOR, EX PARTE LAW SOCIETY,
[28 T. L. R. 59—Div. Ct.]

24. Partnership with Unqualified Persons—"Touting" Amongst Prisoners.—A solicitor purported to act for, and subsequently to employ, unqualified persons. He allowed them to carry on a business in his name, in the course of which they solicited money from the friends of prisoners, and obtained permission to see prisoners awaiting trial, with offers of legal assistance. The solicitor exercised no supervision over them, but received various sums as his share of profits.

HELD—that the solicitor was guilty of professional misconduct.

IN RE D., A SOLICITOR, EX PARTE LAW SOCIETY,
[SOCIETY, 56 Sol. Jo. 93—Div. Ct.]

X. PRACTICE.

[No paragraphs in this vol. of the Digest.]

XI. SOLICITOR TRUSTEE.

25. Solicitor-Executor — Insolvent Estate — Administration Action—Profit Costs.—A solicitor who is sole executor and trustee of a will is not entitled, if the estate is found to be insolvent, to his costs of defending an administration action in person, nor to any other costs, except his out-of-pocket expenses, even though the will contained a clause empowering him to make professional charges, and the order in the action on further consideration directed the costs of the defendant to be taxed as between solicitor and client and retained by him out of the balance due from him.

IN RE SHUTTLEWORTH, LILLEY v. MOORE, 55
[Sol. Jo. 366—Joyce, J.]

XII. UNDERTAKINGS.

See also PRACTICE, No. 33.

26. Undertaking to Pay Money—Undertaking given to Person not a Client—No Legal Proceedings Pending and no Misconduct on Part of Solicitor—Jurisdiction of Court to Enforce Undertaking by Summary Order.—The Court has jurisdiction to enforce by a summary order an undertaking given by a solicitor to repay a sum of money received by him in his capacity as a solicitor, although the person to whom the undertaking was given was not the client of the solicitor, and there were no legal proceedings pending when the undertaking was given, and there is no misconduct on the part of the solicitor. When a solicitor in the course of business which he is conducting for a client with a third party in the way of his profession gives to that third party an undertaking incidental to that business, his undertaking is one which is given by him in his capacity as a solicitor, and may be enforced by summary remedy.

Pearl v. Bushell ((1827) 2 Sim. 38) and *dictum* of Lawrence, J., in *In re a Solicitor Ex parte Hales* ([1907] 2 K. B. 539) not followed.

UNITED MINING AND FINANCE CORPORATION, LD. v. BECHER, [1910] 2 K. B. 296; 79 L. J. K. B. 1006; 103 L. T. 65—Hamilton, J.]

On appeal the matter was disposed of without any decision by the C. A. on the above questions of law and practice ([1911] 1 K. B. 840; 80 L. J. K. B. 686—C. A.).

XIII. UNQUALIFIED PERSONS.

[No paragraphs in this vol. of the Digest.]

SOUTH AUSTRALIA.

See DEPENDENCIES AND COLONIES.

SPECIFIC PERFORMANCE.

See also DEPENDENCIES, No. 37; SALE OF LAND, Nos. 5, 7.

1. Sale of Land—Conduct of Vendor.—In March, 1904, the defendants agreed to pur-

Specific Performance—Continued.

chase land for a public purpose, subject to certain consents being obtained, which were in fact obtained in May, 1906. In April, 1905, the vendor wrote: "After the expiration of the period named" for completion "I shall not consider myself bound by any agreement, but shall dispose of the lots as I may think fit." And in June, 1906, he wrote: "The commissioners have most vexatiously delayed necessary procedure for upwards of two years. I therefore wish them clearly to understand that I shall not consent to extend the time of settlement for one day."

HELD—that the vendor had not debarred himself from asking for specific performance of the contract.

Royou v. Paul ((1858) 28 L. J. Ch. 555) distinguished.

Decision of High Court of Justice of the Isle of Man reversed.

LAUGHTON v. COMMISSIONERS OF PORT ERIN, [1910] A. C. 565; 80 L. J. P. C. 73; 103 L. T. 148—P. C.

2. Sale of Land—Default of Purchaser—Forfeiture of Deposit—Rescission of Contract—Form of Order.—[The defendant entered into a contract with the plaintiff to purchase certain freeholds and paid a deposit on the usual conditions as to forfeiture of deposit and resale on failure to complete. The defendant having failed to complete, the plaintiff obtained the usual judgment for specific performance. After the date for specific performance had expired without completion, the plaintiff moved that the contract might be rescinded and the deposit forfeited, and did not ask for an order to resell, but for a declaration that the defendant had abandoned his contract.

Neville, J., declined to make a new form of order or to make the declaration asked for, but allowed an order in this form:—The defendant having failed to complete his purchase, declare the deposit forfeited and rescind the contract.

JONES v. BURNELL, [1911] W. N. 153; 131 L. T. [Jo. 219; 46 L. J. N. C. 416—*Neville, J.*

3. Contract—Option—Withdrawal by Cautious—Communication by Third Parties—Relation back of Acceptance—Prior Equity—Specific Performance or Damages.—[The defendant made the plaintiff an offer, to remain open for seven days, of the lease of the defendant's premises. The defendant the next day agreed to let the premises to R. The plaintiff purported to exercise the option within the seven days, and claimed specific performance of the alleged contract as from the date of the defendant's offer.

HELD—that, there being sufficient evidence of notice received by the plaintiff of acts inconsistent with the granting of the lease by the defendant to the plaintiff, the offer of the defendant had been withdrawn and was not a continuing offer to the date of acceptance by the defendant, but that, if it had been, R. having no notice before he entered into the agreement to take the lease of the plaintiff's rights, R. would

have a prior equity, and the plaintiff would not have been entitled to specific performance.

CARTWRIGHT v. HOOGSTOEL, 105 L. T. 628—[*Eve, J.*

SPIRITS.

See FOOD AND DRUGS; INTOXICATING LIQUORS; REVENUE.

SPORT AND SPORTING.

See FISHERIES, II.; GAME; LANDLORD AND TENANT.

STAMPS AND STAMP DUTIES.

See REVENUE.

STATUTES.

	COL.
I. CONSTRUCTION	606
II. RETROSPECTIVE OPERATION	607

See also CONTRACT, No. 12; DEATH DUTIES, No. 4; DISTRESS, No. 4; FOOD, No. 3; HUSBAND AND WIFE, No. 3; LANDLORD AND TENANT, No. 16; LIMITATION OF ACTIONS, No. 1; MASTER AND SERVANT, No. 40.

I. CONSTRUCTION.

1. Interpretation—Usage.—[As against a plain statutory enactment no usage, however long continued, can prevail.

LORD ADVOCATE v. WALKER TRUSTEES, [1911] W. N. 245; 28 T. L. R. 101; 49 Sc. L. R. 73—[*H. L. (Sc.)*

See S. C., SCOTTISH LAW, No. 2.

2. Construction—Scottish Decision on Semelae Point.—[In a case arising on the construction of a statute equally applicable to England and Scotland, it is the duty of an English Court of first instance to follow an unanimous decision of the Court of Session.

IN RE HARTLAND, BANKS v. HARTLAND, [1911] 1 Ch. 459; 80 L. J. Ch. 305; 104 L. T. 490; 35 Sol. Jo. 312—[*Evans, J.*

3. Clause from Public Act Incorporated in Private Act—Effect of Subsequent Repeal of Public Act.—[Where a clause from a public Act has been incorporated with and forms part of a private Act, that part of the private Act is not

I. Construction—Continued.

repealed by the mere repeal subsequently of the public Act.

JENKINS *v.* GREAT CENTRAL RY. CO., [1912]
[1 K. B. 1; 81 L. J. K. B. 21; [1911] W. N.
216; 28 T. L. R. 61—Lord Coleridge, J.]

II. RETROSPECTIVE OPERATION.

See CRIMINAL LAW, No. 44; LANDLORD
AND TENANT, No. 16.

STATUTE OF FRAUDS.

See CONTRACT; EVIDENCE; SALE OF
GOODS; SALE OF LAND.

STATUTE OF LIMITATIONS.

See LIMITATION OF ACTIONS; REAL
PROPERTY AND CHATTELS REAL.

STATUTE OF USES.

See REAL PROPERTY AND CHATTELS
REAL; SETTLEMENTS; TRUSTS AND
TRUSTEES; WILLS.

STOCK EXCHANGE.

	COL.
I. RULES AND CUSTOMS	607
[No paragraphs in this vol. of the Digest.]	
II. BROKERS AND CLIENTS.	
(a) In General	607
(b) Carrying Over	608
[No paragraphs in this vol. of the Digest.]	
(c) Closing Accounts	608
[No paragraphs in this vol. of the Digest.]	
(d) Defaulting Brokers	608
[No paragraphs in this vol. of the Digest.]	

I. RULES AND CUSTOMS.

[No paragraphs in this vol. of the Digest.]

II. BROKERS AND CLIENTS.**(a) In General.**

1. *Broker and Client—General Lien—Law of Scotland.*—Stockbrokers who have received transfers of stock or shares for delivery to a customer have by the law of Scotland a general lien on these transfers for the balance due to them by the customer.

The appellants, stockbrokers in Edinburgh, claimed to retain in their hands an uncompleted transfer of shares purchased and paid for by the respondent until a claim by the

appellants arising out of a subsequent transaction between them and the respondent was satisfied.

HELD—that the appellants as stockbrokers had a general lien on the transfer in question until the claim against the respondent was satisfied.

Decision of Ct. of Sess. ([1911] S. C. 209; 48 Sc. L. R. 111) reversed.

JOHN D. HOPE & CO. *v.* GLENDINNING, [1911]
[A. C. 419; 80 L. J. P. C. 193; 48 Sc. L. R.
775—H. L. (Sc.).]

(b) Carrying Over.

[No paragraphs in this vol. of the Digest.]

(c) Closing Accounts.

[No paragraphs in this vol. of the Digest.]

(d) Defaulting Brokers.

[No paragraphs in this vol. of the Digest.]

STOPPAGE IN TRANSIT.

See CARRIERS; SALE OF GOODS; SHIPPING AND NAVIGATION.

STREETS.

See HIGHWAYS, STREETS AND BRIDGES;
METROPOLIS, IX.

STREET BETTING.

See GAMING AND WAGERING.

STREET RAILWAYS.

See TRAMWAYS AND LIGHT RAILWAYS.

STREET TRAFFIC.

	COL.
I. HACKNEY CARRIAGES	608
II. MOTOR CARS.	
(a) Offences.	
(i.) <i>Driving and Speed</i>	609
(ii.) <i>Registration and Licensing</i>	610
(iii.) <i>Use and Construction</i>	611
(iv.) <i>Miscellaneous</i>	613
(b) Appeals	613
(c) Royal Parks	613
III. MISCELLANEOUS	614

See also METROPOLIS, Nos. 11, 12, 13;
NEGLIGENCE, No. 16.

I. HACKNEY CARRIAGES.

See LOCAL GOVERNMENT, No. 7;
REVENUE, No. 4.

II. MOTOR CARS.

See also MASTER AND SERVANT, No. 126; METROPOLIS, Nos. 11, 12, 13; REVENUE, No. 5.

(a) Offences.

See also MAGISTRATES, No. 18.

(i.) Driving and Speed.

See also Nos. 4, 6, *infra*.

1. *Exceeding Speed Limit—Warning as to "Traps"—Warning Driver—Obstruction of Police—Prevention of Crimes (Amendment) Act, 1885* (48 & 49 Vict. c. 75), s. 2—*Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 9 (1).—The employee of an association of motor car owners, who is stationed on a highway for the purpose of warning the drivers of motor cars belonging to members of the association that they are approaching a measured distance over which police officers intend to take the speed of the cars, and who accordingly does give such warning to the drivers of such motor cars, which at the time of the warning are being driven at a rate of speed exceeding twenty miles an hour, contrary to sect. 9, sub-sect. 1, of the Motor Car Act, 1903, the result of the warning being that the cars are slowed down and pass through the measured distance at a speed not exceeding twenty miles an hour, is guilty of the offence of wilfully obstructing the police in the execution of their duty, contrary to sect. 2 of the Prevention of Crimes (Amendment) Act, 1885.

Bastable v. Little ([1907] 1 K. B. 59) distinguished.

BETTS v. STEVENS, [1910] 1 K. B. 1; 79 L. J. [K. B. 17; 101 L. T. 561; 73 J. P. 486; 26 T. L. R. 5; 22 Cox, C. C. 187; 7 L. G. R. 1052—Div. Ct.

2. *Exceeding Speed Limit—Previous Convictions—Proof—No Appearance in Person—Evidence of Identity—Prevention of Crimes Act, 1871* (34 & 35 Vict. c. 112), s. 18—*Motor Car Act, 1903* (3 Edw. 7, c. 36), ss. 3, 4, 9.—On the hearing of an information against the appellant L. W. B. M., of R. Street Chambers, St. James', for having driven a motor car on a public highway at a speed exceeding twenty miles an hour contrary to sect. 9 of the Motor Car Act, 1903, he did not appear, but was represented by counsel, and the justices held that the offence had been proved. At an adjourned hearing for the proof of previous convictions, of which notice was given to the appellant's counsel, the appellant was not present, but was again represented by counsel. Evidence was then given that a person bearing the name L. W. B. M., of Chelsea, and L. W. B. M., of R. Street Chambers, St. James', being the same person, had twice been convicted for exceeding the speed limit at C.; and, further, that a person of the name L. M., of R. Street Chambers, St. James's Street, had been convicted at B. for the same offence. Evidence was also given by the registration officer of the London County Council

that a person of the same name and address as the appellant held a licence, No. 5080, at all material times, and thereupon evidence was admitted that when the licence was produced by the person driving the car at B. it bore the same number, 5080, and that it had been issued by the London County Council.

Certified copies of each of the three convictions were produced, but no notice to produce his licence had been served upon the appellant.

The justices were of opinion that there was legally admissible evidence before them that the appellant was the person mentioned in the three certified copies of convictions.

HELD—that there was evidence upon which the justices could act.

The word "proof" in sect. 18 of the Prevention of Crimes Act, 1871, does not mean conclusive proof, but evidence upon which a jury might act.

MARTIN v. WHITE, [1910] 1 K. B. 666; 79 [L. J. K. B. 553; 102 L. T. 23; 74 J. P. 106; 26 T. L. R. 218; 22 Cox, C. C. 236; 8 L. G. R. 218—Div. Ct.

3. *Indorsement of Licence—Appeal—Jurisdiction—Modification of Sentence—Removal of Indorsement—Summary Jurisdiction (Scotland) Act, 1908* (8 Edw. 7, c. 65), s. 75—*Motor Car Act, 1903* (3 Edw. 7, c. 36), ss. 1, 4 (1).—On conviction of driving a motor car at a speed which was dangerous to the public, the sheriff-substitute ordered the licence of the accused to be indorsed.

HELD—that the High Court of Justiciary had no power to modify the sentence by removing the indorsement on the licence while letting the conviction stand.

CROMWELL v. RENTON, [1911] S. C. (J.) 86; 48 [Sc. L. R. 823—Ct. of Justy.

(ii.) Registration and Licensing.

4. *User at Night without Rear Light—Conviction—Indorsement of Licence—Offence in Connection with Driving—Motor Car (Registration and Licensing) Order, 1903*, art. 11—*Motor Car Act, 1903* (3 Edw. 7, c. 36), ss. 2 (4), 4 (1) (e), (2).—Sect. 4 of the Motor Car Act, 1903, provides that any Court before whom a person is convicted of an offence "under this Act or of any offence in connection with the driving of a motor car" shall cause particulars of the conviction to be indorsed on his licence; and failure to produce a licence for the purpose of indorsement is made an offence.

The respondent having been convicted of using a motor car at night on a public highway without having a lamp burning on the back of the car as required by art. 11 of the Motor Car (Registration and Licensing) Order, 1903, was called upon to produce his licence for the purposes of indorsement, and, having failed to do so, he was charged with the commission of an offence under sect. 4 of the Act of 1903. The justices dismissed the charge.

HELD—that the respondent should have been convicted, as the offence of which he had been

11. Motor Cars—Continued.

convicted was an offence under the Motor Car Act, 1903.

HELD, FURTHER, by Lord Alverstone, C.J., and Avory, J., that it was also an offence in connection with the driving of a motor car.

BROWN v. CROSSLEY, [1911] 1 K. B. 603; 80 [L. J. K. B. 478; 104 L. T. 429; 75 J. P. 177; 27 T. L. R. 194; 9 L. G. R. 194—Div. Ct.

5. *Suspension of Licence—Excessive Speed—Notice of Appeal—Commencement of Period of Suspension.* *Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 4 (1).—The appellant was summoned for exceeding the speed limit of twenty miles per hour fixed by the Motor Car Act, 1903, and he pleaded guilty. He was convicted and fined and his licence was ordered to be suspended for three months. The appellant appealed to quarter sessions, but his appeal was struck out on the ground that, as the appellant had pleaded guilty, quarter sessions had no jurisdiction to hear the appeal.

At a date which was more than three months after the conviction, but less than three months after the appeal came on to be heard at quarter sessions, the appellant was seen driving a motor car and was summoned for doing so without being licensed.

HELD—that the appellant was duly licensed, as the period of suspension of his licence commenced to run at the date of his conviction, and the operation of the order of suspension was not deferred by the notice of appeal.

KIDNER v. DANIELS, 102 L. T. 132; 74 J. P. 127; 22 Cox, C. C. 276; 8 L. G. R. 159—Div. Ct.

(iii.) Use and Construction.

6. *Failure to Carry Lamp—Offence “in Connection with the Driving of a Motor Car.”—Indorsement of Licence—Motor Car (Use and Construction) Order, 1904, art. 2 (7).* *Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 4.—Failure on the part of the person in charge of a motor car to have, as required by art. 2 (7) of the Motor Car (Use and Construction) Order, 1904, a lamp on the extreme right or off-side of the car so as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the car is proceeding is an offence “in connection with the driving of a motor car” within sect. 4 of the Motor Car Act, 1903, and a conviction for that offence may therefore be indorsed on such person's licence.

EX PARTE SYMES, [1910] W. N. 219; 103 L. T. 428; 75 J. P. 33; 27 T. L. R. 21; 22 Cox, C. C. 346; 9 L. G. R. 154—Div. Ct.

7. *Obstruction of Highway—Offence in Connection with the Driving of a Motor Car—Liability to Indorsement.* *Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 4 (1), (2).—*Motor Cars (Use and Construction) Order, 1904, art. 4 (2).*—The driver of a motor car, after unloading goods in one of the principal

thoroughfares of a town, left the car end-wise against the kerbstone whilst he was delivering goods in other parts of the town. He was convicted of allowing the motor car to stand on the highway so as to cause an unnecessary obstruction thereof contrary to art. 4 (2) of the Motor Cars (Use and Construction) Order, 1904.

HELD—that the driver had not been convicted of an offence in connection with the driving of a motor car within the meaning of sect. 4, sub-sect. 1, of the Motor Car Act, 1903, so as to make it obligatory upon him, under sect. 4, sub-sect. 2, of the same Act, to produce his licence within a reasonable time for the purposes of indorsement.

R. v. JUSTICES OF YORKSHIRE (WEST RIDING), EX PARTE SHACKLETON, [1910] 1 K. B. 439; 79 L. J. K. B. 244; 102 L. T. 138; 22 Cox, C. C. 280; *sub nom.* R. v. BEAVER AND ARMSTRONG, &C., 74 J. P. 127; 8 L. G. R. 163—Div. Ct.

8. *Lights—Identification Plate not Illuminated—Responsibility of Owners for Omission by Servant.* *Motor Car (Registration and Licensing) Order, 1903, art. 11.*—The appellants, a motor-cab company, were charged with aiding and abetting one of their drivers in committing an offence under the Motor Car Acts, 1896 and 1903. At the hearing it was found that the driver in question was driving one of the appellants' motor-cabs more than one hour after sunset without having the identification plate at the back of the cab illuminated; that the lamp was hanging too low and was showing a light beneath the plate; that a proper bracket was provided on which to hang the lamp; and that it was the duty of the appellants' foreman to see that the cabs went out all right. The appellants contended that the driver must have taken the lamp from another cab, but of this there was no evidence. The stipendiary magistrate convicted the appellants on the ground that there was carelessness on their part in not seeing that a proper lamp was fixed on the cab.

HELD—that an appeal from the conviction must be dismissed, as there was ample evidence on which to conclude that the cab was sent out by persons for whom the appellants were responsible in a condition which did not comply with the law.

PROVINCIAL MOTOR CAB CO. v. DUNNING, [1909] 2 K. B. 599; 78 L. J. K. B. 822; 101 L. T. 231; 73 J. P. 387; 25 T. L. R. 646; 7 L. G. R. 765; 22 Cox, C. C. 159—Div. Ct.

9. *Heavy Motor Car—Maximum Weights—Over Five Tons but under Seven Tons—Exception—Weight Permissible for Trailer.* *Locomotives on Highways Act, 1896* (59 & 60 Vict. c. 36), ss. 1 (1), 6 (1).—*Locomotives Act, 1898* (61 & 62 Vict. c. 29), ss. 9 (1), 10.—*Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 12 (1).—*Heavy Motor Car Order, 1904, arts. 3, 4 (5).*—By art. 3 of the Heavy Motor Car Order, 1904, a heavy motor car may be used on a

II. Motor Cars—Continued.

highway if its weight unladen does not exceed five tons, or if its weight unladen with the weight of an unladen vehicle drawn by it does not exceed six and a half tons. By art. 4 (5) a heavy motor car, the weight of which unladen exceeds five tons but does not exceed seven tons, and which had been registered before September 1st, 1904, may be used on a highway provided that the procedure prescribed by the article is complied with.

HELD—that the provision in art. 4 (5) is an exception from the provision in art. 3, and that the limit put by art. 3 on the combined weight of a motor car and of a vehicle drawn by it, does not apply in the case of motor cars which come under art. 4 (5), and in regard to which the procedure prescribed by art. 4 (5) has been complied with.

PILGRIM v. SIMMONDS, 105 L. T. 241; 75 [J. P. 427; 9 L. G. R. 966—Div. Ct.

(iv.) Miscellaneous.

10. Mark Indicating Registered Number—Size of Letters—Conviction—Liability to Indorsement—Motor Car Act, 1903 (3 Edw. 7, c. 36), ss. 2 (2), (4), 4 (1), 7 (1)—Motor Car (Registration and Licensing) Order, 1903.—The offence of driving on a public highway a motor car on which the mark indicating the registered number of the car is not composed of letters and figures of the size prescribed by the regulations made by the Local Government Board under sect. 7 (1) of the Motor Car Act, 1903, is not merely an offence against the regulations, but is an offence under the Act, and, therefore, a conviction for such an offence is the subject of indorsement under sect. 4 (1) of the Act.

R. v. GILL, EX PARTE MCKIM, 100 L. T. 858; [73 J. P. 290; 22 Cox, C. C. 118; 7 L. G. R. 589—Div. Ct.

(b) Appeals

See No. 5, *supra*.

(c) Royal Parks.

11. Regulations Fixing Limit of Speed—Indorsement of Licence—Parks Regulation Act, 1872 (35 & 36 Vict. c. 15)—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4.—Sect. 4 of the Motor Car Act, 1903, makes it obligatory on the Court before whom a person is convicted of a third or subsequent offence, consisting of exceeding the ten-mile limit of speed fixed for the Royal parks by the rules issued on April 28th, 1904, under the Parks Regulation Act, 1872, to indorse the defendant's licence with the particulars of the conviction, although those rules were not issued until after the date when the Motor Car Act, 1903, came into operation, namely, January 1st, 1904.

R. v. FLOWDEN, [1909] 2 K. B. 269; 78 L. J. [K. B. 733; 100 L. T. 856; 73 J. P. 266; 25 T. L. R. 430; 22 Cox, C. C. 114; 7 L. G. R. 584—Div. Ct.

III. MISCELLANEOUS.

12. Bye-law—Construction—“Keeping” a Carriage “on the Left or Near Side of the Road.”—A bye-law provided that “if any person shall drive any carriage within the said borough and shall not keep the same on the left or near side of the road in any street in passing along the same except in cases in which he shall have occasion to pass any other carriage or of actual necessity or some sufficient reason for deviation therefrom,” he should be liable to a penalty.

A driver drove a lurry within the said borough in a street varying from 29½ to 31 feet in width, in which was a double set of tram lines over which electric cars passed every two or three minutes. The driver drove his lurry along the street so that the near wheels of the lurry were about 10 feet from the kerbstone, the off wheels being a few inches from the centre of the road, but never over the centre line of the road. There were no other vehicles in that part of the road at the time, and the driver did not by his driving cause any obstruction or annoyance or inconvenience to any person or persons.

HELD—that the driver had not contravened the bye-law.

BOLTON v. EVERETT, 75 J. P. 534; 9 L. G. R. [1052—Div. Ct.

SUBPCENA.

See CRIMINAL LAW AND PROCEDURE; EVIDENCE.

SUBROGATION.

See EQUITY.

SUCCESSION DUTY.

See DEATH DUTIES.

SUICIDE.

See CRIMINAL LAW AND PROCEDURE.

SUMMARY JURISDICTION.

See MAGISTRATES.

SUNDAY TRADING.

See TIME.

SUPER-TAX.

See INCOME TAX, No. 8.

SUPPORT.

See DAMAGES; EASEMENTS; MINES.

SURETY.

See GUARANTEE.

SURGEONS.

See MEDICINE AND PHARMACY.

SWINE FEVER.

See ANIMALS.

TAXATION.

See DEATH DUTIES; INCOME TAX; INHABITED HOUSE DUTY; LAND TAX; REVENUE.

TAXATION OF COSTS.

See ARBITRATION; COUNTY COURTS; PRACTICE AND PROCEDURE; SOLICITORS, ETC.

TELEGRAPHS AND TELEPHONES.

COL.

- I. TELEPHONES 615
 II. SUBMARINE CABLE 616

[No paragraphs in this vol. of the Digest.]

See also DEPENDENCIES, No. 30.

I. TELEPHONES.

1. *Telephone Company—Using Poles under Licence from Corporation—Revocation—Threats—Claim of Right to remove Poles—Injunction.*—A telephone company were using poles erected in 1887, under a licence from a corporation. On October 10th, 1910, the corporation gave the company notice to remove the poles. Arrangements having been made with the Postmaster-General for an underground telephone service after January 1st, 1912, when the Postmaster-General was to take over the company's undertaking, the corporation desired that the poles should be taken down before December 27th, 1911. If taken down at that date the effect would be that the Postmaster-General would not be liable to pay the company for the poles. The corporation claimed a right to remove the poles, but contended that they had not threatened to

remove them, and they refused to give any undertaking not to remove the poles.

HELD—that the corporation must be restrained by injunction from removing or interfering with the poles.

DICKENS *v.* NATIONAL TELEPHONE CO.,
 [NATIONAL TELEPHONE CO. *v.* HYTHE CORPORATION, 75 J. P. 557—Eady, J.]

II. SUBMARINE CABLE.

[No paragraphs in this vol. of the Digest.]

TENANT FOR LIFE AND REMAINDERMAN.

See RENT-CHARGES AND ANNUITIES; SETTLEMENTS; TRUSTS AND TRUSTEES; WILLS.

TENDER.

See CONTRACT; MONEY; MORTGAGE.

TESTAMENTARY CAPACITY.

See WILLS.

THAMES, RIVER.

See METROPOLIS; SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

THEATRES, MUSIC-HALLS, AND SHOWS.

See also CONTRACT, No. 5; DISTRESS, No. 2.

1. *Cinematograph—Licence for Exhibition—Condition—Not to be Open on Sunday—Validity—Cinematograph Act, 1909 (9 Edw. 7, c. 30), ss. 1, 2.*—A county council, in granting a licence under sect. 2 of the Cinematograph Act, 1909, for a cinematograph exhibition, may lawfully insert a condition therein that the exhibition shall not be opened on Sunday, Good Friday, or Christmas Day.

LONDON COUNTY COUNCIL *v.* BERMONDSEY
 [BIOSCOPE CO., [1911] 1 K. B. 445; 80 L. J. K. B. 141; 103 L. T. 760; 75 J. P. 53; 27 T. L. R. 141; 9 L. G. R. 79—Div. Ct.]

2. *Royal Albert Hall—Stage Plays—Licence—Theatres Act, 1843 (6 & 7 Vict. c. 68, s. 2).*—Stage plays cannot lawfully be performed at

Theatres, Music-Halls, and Shows—Continued.

the Albert Hall theatre without a licence from the Lord Chamberlain.

ROYAL ALBERT HALL v. LONDON COUNTY COUNCIL, 104 L. T. 891; 75 J. P. 337; 27 T. L. R. 362; 9 L. G. R. 626—Div. Ct.

THEFT.

See CRIMINAL LAW AND PROCEDURE.

TIME.

I. COMPUTATION OF TIME . . .	COL. 617
II. SUNDAY OBSERVANCE . . .	618

See also PRACTICE, No. 10.

I. COMPUTATION OF TIME.

See SOLICITORS, No. 4.

II. SUNDAY OBSERVANCE.

See also THEATRES, No. 1.

1. *Sunday Trading—Prosecution—Consent of Chief Officer of Police—Superintendent Appointed to Act in Absence of Chief Constable—Sufficiency of Consent of Superintendent—Sunday Observation Prosecution Act, 1871* (34 & 35 Vict. c. 87), ss. 1, 2, and Sched.]—By sect. 1 of the Sunday Observation Prosecution Act, 1871, no prosecution shall be taken against any person for any offence under the Sunday Observation Act, 1677 (29 Car. 2, c. 7), except with the consent in writing of the chief officer of police of the police district, or of two justices or a stipendiary magistrate having jurisdiction in the place.

HELD—that for the purpose of giving such consent the chief officer of police is a *persona designata*, and the consent cannot be given by the police officer who by the resolution of a council has been duly appointed to act in the absence of the chief officer as deputy for the chief officer and who is in fact so acting.

R. v. HALKETT, Ex PARTE BUTNICK, [1910] 1 K. B. 50; 79 L. J. K. B. 12; 101 L. T. 603; 74 J. P. 12; 22 Cox, C. C. 202—Div. Ct.

TITHE.

See ECCLESIASTICAL LAW, No. 3.

TOLLS.

See HIGHWAYS; MARKETS AND FAIRS; WATERS AND WATERCOURSES.

TORT.

See HUSBAND AND WIFE, No. 8; MASTER AND SERVANT, No. 38; PRACTICE, No. 22.

TRADE AND TRADE UNIONS.

I. TRADE NAME . . .	COL. 618
II. TRADE CUSTOMS . . .	618
[No paragraphs in this vol. of the Digest.]	
III. TRADE COMBINATION . . .	618
IV. RESTRAINT OF TRADE . . .	618
V. TRADE UNIONS.	
(a) Miscellaneous . . .	620
(b) Rules . . .	620
(c) Conspiracy . . .	621
[No paragraphs in this vol. of the Digest.]	
(d) Offences . . .	621
[No paragraphs in this vol. of the Digest.]	

I. TRADE NAME.

See TRADE MARKS AND TRADE NAMES.

II. TRADE CUSTOMS.

[No paragraphs in this vol. of the Digest.]

III. TRADE COMBINATION.

1. *Trade Association—Expulsion of Member—Rules—Ultra Vires.*—The Court will not control the rules and regulations which a majority of the members of a trade association adopt for the conduct of their undertaking, unless satisfied that they are so oppressive as to defraud the minority or violate some principle of law.

MERRIFIELD, ZIEGLER & Co. v. LIVERPOOL [COTTON ASSOCIATION AND HAPKE & Co., [1911] W. N. 138; 105 L. T. 97; 55 Sol. Jo. 581—Eve, J.

2. *Registered Company—Memorandum and Articles—Regulation of Output and Prices—Trade Union—Trade Union Act, 1871* (34 & 35 Vict. c. 31), ss. 4, 5.]—The mere fact that in its memorandum and articles of association a company has power to enter into an arrangement for the regulation of the output of, and the price to be obtained for, goods—this not being one of the main objects of the company—does not constitute the company a trade union, and as such incapable of registration under the Companies Act.

Edinburgh and District Aerated Water Manufacturers Defence Association v. Jenkinson (5 Fraser, 1159) distinguished.

BRITISH ASSOCIATION OF GLASS-BOTTLE MANUFACTURERS, LD. v. NETTLEFOLD, 27 T. L. R. 527—Hamilton, J.

IV. RESTRAINT OF TRADE.

See also No. 10, *infra*; MASTER AND SERVANT, Nos. 132, 133; SOLICITORS, No. 14.

3. *Monopoly—Chartered Company—Exclusive Licence—Grant of Monopoly of Trade—Ultra vires.*—By the charter incorporating the respondent company it was provided that nothing in this our charter shall be deemed to authorise the

IV. Restraint of Trade—*Continued.*

company to set up or grant any monopoly of trade." The respondents agreed to grant to the appellants an exclusive licence to work all diamondiferous ground in the respondents' territories.

HELD—that the prohibition in the charter had no application to a grant or licence to use and exercise some of the respondents' proprietary rights over the land, and therefore that the agreement to grant an exclusive licence to the appellants was not void as being *ultra vires*.

DE BEERS CONSOLIDATED MINES, LD. *v.* BRITISH [SOUTH AFRICA CO., [1911] W. N. 245; 28 T. L. R. 114; 56 Sol. Jo. 175—H. L.

See S. C. COMPANIES, No. 4.

4. *Covenant not to Carry on Business of "Provision Merchant"—Manufacture and Sale of Margarine.*—A covenant not to carry on or to be interested in the business of a provision merchant within a certain area is not broken by the manufacture and sale of margarine in the prohibited area.

Decision of Eve, J. (103 L. T. 588; 27 T. L. R. 94; 55 Sol. Jo. 92) affirmed.

LOVELL AND CHRISTMAS, LD. *v.* WALL, 104 [L. T. 85; 27 T. L. R. 236—C. A.

5. *Covenant not to Carry on Business—Construction—Chimney-sweep—Acting as Servant of Rival Chimney-sweep.*—B., a chimney-sweep, entered into an agreement for his employment by a company engaged in the business of chimney-sweeping which contained the following undertaking:—"That he will give the whole of his time and services to the company, will not undertake any work or orders of any kind except for the company and in their name and on their behalf, nor carry on or be concerned in carrying on the business of a chimney-sweep either by himself or in conjunction with any other person or persons now or at any time within a radius of three miles of the above-mentioned station." After leaving the employment of the company B. was employed as a servant by a chimney-sweep competing with the company within the district specified in the clause.

HELD—that the clause did not apply to the engagement of B. as a servant.

RAMONEUR CO. *v.* BRIKEY, 104 L. T. 809; 55 [Sol. Jo. 480—Div. Ct.

6. *Covenant not to Engage in Similar Business in United Kingdom—Advertising Agent—Restraint too Wide.*—A covenant by an employee of an advertising agent that he would not carry on, or be engaged directly or indirectly in, any similar business in any part of the United Kingdom is too wide, and therefore void.

STUART AND SIMPSON *v.* HALSTEAD, 55 Sol. Jo. [598—Eve, J.

V. TRADE UNIONS.

See also No. 2, *supra*.

(a) Miscellaneous.

7. *Conditional Payment to Member—Action Claiming Repayment—Action for Payment of a Penalty—Action to Provide Benefits to Members—Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 4.*—The defendant, a member of the plaintiff trade union, having been injured at his work, received from the plaintiffs, in accordance with their rules, a sum of £100, and by a written agreement, which by the rules he had to execute, he agreed to repay that amount in full in the event of his returning to his trade. The defendant having returned to his trade, the plaintiffs sued him to recover the £100.

HELD (Kennedy, L.J., dissenting)—that the agreement executed by the defendant was an agreement for the application of the funds of the trade union to provide benefits to members within sect. 4, sub-sect. 3, of the Trade Union Act, 1871, and, therefore, that an action to enforce it was not maintainable.

Decision of Div. Ct. ([1911] 2 K. B. 132; 80 L. J. K. B. 699; 104 L. T. 456; 27 T. L. R. 321; 55 Sol. Jo. 409) reversed.

BAKER *v.* INGALL, [1911] W. N. 252; *sub nom.* [FRIENDLY SOCIETY OF IRONFOUNDERS OF ENGLAND, IRELAND, AND WALES *v.* INGALL, 28 T. L. R. 104; 56 Sol. Jo. 122—C. A.

8. *Conditional Payment to Member—Action Claiming Repayment—Competency—Trade Union, 1871 (34 & 35 Vict. c. 31), s. 4.*—The rules of a trade union provided that any member permanently disabled by accident should receive an accident bonus benefit, which he should be obliged to refund in the event of his resuming work at his trade. It was further provided that at the time of receiving the benefit he should sign an agreement binding himself to refund.

HELD (Lord Johnstone dissenting)—that an action by a trade union to recover from a workman such an accident bonus benefit was competent and did not come within sect. 4 of the Trade Union Act of 1871.

Decision of Div. Ct. in *Baker v. Ingall* (*supra*), reversed by C. A.) approved.

WILKIE *v.* KING, [1911] S. C. 1310; 48 Sc. L. R. [1057—Ct. of Sess.

9. *Representation on Municipal Bodies—Application of Funds—Compulsory Levy—Ultra Vires.*—It is not competent for a trade union to make a compulsory levy on its members for the purpose of securing representation on municipal and other local bodies (other than boards of guardians).

WILSON *v.* AMALGAMATED SOCIETY OF [ENGINEERS, [1911] 2 Ch. 324; 80 L. J. Ch. 469; 104 L. T. 715; 27 T. L. R. 418; 55 Sol. Jo. 498—Parker, J.

(b) Rules.

See also PRACTICE, No. 26.

10. *Action to Enforce Benefits—Claim for Rescission of Resolution for Expulsion of Member—Illegality of Association—Restraint of*

V. Trade Unions—Continued.

Trade—Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 4.]—The plaintiff claimed (1) a declaration that a resolution of the executive committee of the defendant society that he be expelled from the society was *ultra vires* and illegal; and (2) an injunction restraining the defendants from acting upon or enforcing that resolution.

HELD—on a construction of its rules, that the society was not illegal at common law, and that the Court had jurisdiction to entertain the action, which, being merely an application by the plaintiff for his reinstatement as a member of the society, was not a proceeding instituted with the object of directly enforcing an agreement for the application of the funds of a trade union to provide benefits to members within the meaning of sect. 4, sub-sect. 3 (a), of the Trade Union Act, 1871.

Rigby v. Connol ((1880) 14 Ch. D. 482) and *Chamberlain's Wharf, Ltd. v. Smith* ([1900] 2 Ch. 605) discussed.

Decision of Warrington, J. (27 T. L. R. 115) reversed.

OSBORNE v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS, [1911] 1 Ch. 540; 80 L. J. Ch. 315; 104 L. T. 267; 27 T. L. R. 289—C. A.

(c) Conspiracy.

[No paragraphs in this vol. of the Digest.]

(d) Offences.

[No paragraphs in this vol. of the Digest.]

VI. PRACTICE—Continued.

2. Costs	COL. 626
3. Trifling Offences	626
[No paragraphs in this vol. of the Digest.]	

VII. MISCELLANEOUS 626

I. REGISTRATION.

(1) Application.

1. *Spanish Brand Name on Cigars—Cigars Made in Holland—“Calculated to Deceive”*—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 11.]—It cannot be laid down that the mere fact that a Spanish brand name is used on cigars, which are not made in a Spanish-speaking country, is “calculated to deceive” within the meaning of sect. 11 of the Trade Marks Act, 1905.

IN RE VAN DER LEEUW'S TRADE MARK, [1912] 1 Ch. 40; [1911] W. N. 214; 105 L. T. 626; 28 T. L. R. 35; 56 Sol. Jo. 53; 28 R. P. C. 708—Parker, J.

(2) Invented or Descriptive Name: Secondary Meaning.

2. *Distinctive Mark—Letters of Alphabet—Innate or Acquired Distinctiveness—Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9 (5).]—In the absence of special circumstances letters of the alphabet cannot be registered as a distinctive mark under sub-sect. 5 of sect. 9 of the Trade Marks Act, 1905. But distinctiveness is an attribute which can be acquired, it need not necessarily be innate, and there may be cases where the initial letters of surnames of a trader have been so used as, in fact, to have become distinctive of particular goods.

IN RE W. & G. DU CROS'S APPLICATION, [1911] [W. N. 139; 80 L. J. Ch. 644; 105 L. T. 16; 27 T. L. R. 499; 55 Sol. Jo. 567; 28 R. P. C. 413—Eve, J.

HELD ON APPEAL—that the Registrar should be directed to proceed with an application for leave to register “W. & G.,” inscribed in a running hand, the G. having a distorted tail, but not a similar application as to the same letters in ordinary block type: 132 L. T. Jo. 179—C. A.

3. *Distinctive Mark—Surname—Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9.]—The name “Pope”—the applicants’ surname—held not to be adapted to distinguish the goods manufactured by the applicants from those manufactured by others, and that an application for its registration as a trade mark must be refused.

IN RE POPE'S ELECTRIC LAMP CO., LD.'S APPLICATION, [1911] 2 Ch. 382; 80 L. J. Ch. 682; 105 L. T. 580; 27 T. L. R. 567; 28 R. P. C. 629—Warrington, J.

4. “Standard”—*Canada—Canadian Trade Mark and Design Act*, 1879.]—The word “standard” cannot properly be registered as a trade

TRADE MARKS AND TRADE NAMES.

I. REGISTRATION.	COL. 622
1. Application	622
2. Invented or Descriptive Name: Secondary Meaning	622
3. Alteration and Rectification	623
II. DECEPTION.	
1. By Use of Same Trade Name	623
2. By Colourable Imitation of Name	624
[No paragraphs in this vol. of the Digest.]	
3. By Colourable Imitation of Label, Design, or Get-up	624
4. Passing off Generally	624
III. CONDUCT FACILITATING DECEPTION	625
[No paragraphs in this vol. of the Digest.]	
IV. MISREPRESENTATIONS BY ADVERTISEMENT, ETC.	625
V. FALSE TRADE DESCRIPTION: MERCHANDISE MARKS ACT, 1887	625
VI. PRACTICE.	
1. In General	626

I. Registration—Continued.

mark under the Canadian Trade Mark and Design Act, 1879.

STANDARD IDEAL CO. v. STANDARD SANITARY [MANUFACTURING Co., [1911] A. C. 78; 80 L. J. P. C. 87; 103 L. T. 410; 27 T. L. R. 63; 27 R. P. C. 789—P. C.

See S. C. DEPENDENCIES, No. 17.

(3) Alteration and Rectification.

5. *Application for Removal from Register—Passing off Action—Similarity of Get-up—Mark Itself not Calculated to Deceive—No Evidence of Deception—“Carvino”*—*“Wincarnis.”*]—The plaintiffs were the manufacturers of a medicated wine made from extract of meat and malt wine, which they sold under the name of “Wincarnis,” which name was the plaintiffs’ registered trade mark. Subsequently, the defendants, who were the manufacturers of another medicated wine made from wine and extract of meat, registered as their trade mark the name “Carvino.” In an action to restrain the defendants from selling their medicated wine with a get-up calculated to lead to the belief that it was the plaintiffs’ medicated wine, and a motion by the plaintiffs to have the name “Carvino” removed from the register, Eady, J., held that the plaintiffs were entitled to the injunction and other relief claimed in the action, but that the motion must be refused, without costs, as the word “Carvino” alone and without reference to get-up was not calculated to deceive. On appeal:—

HELD—that, in the absence of any evidence of actual deception or of the defendants’ intention to deceive, the judicial inference could not be drawn that the two get-ups were so alike as to be calculated to deceive, and therefore that the plaintiffs’ passing-off action failed as well as their application to have the name “Carvino” removed from the register.

Decision of Eady, J. ([1911] 2 Ch. 572; 81 L. J. Ch. 16; 27 T. L. R. 533; 55 Sol. Jo. 649; 28 R. P. C. 645, reversed in part.

COLEMAN & Co., LD. v. STEPHEN SMITH & [Co., LD., IN RE “CARVINO” TRADE MARK, [1911] 2 Ch. 572, 580; 81 L. J. Ch. 16, 18, n.; 28 T. L. R. 65—C. A.

II. DECEPTION.

See also No. 1, *supra*.

(1) By Use of Same Trade Name.

6. *Passing Off—Name well known to Skilled Class—No Deception in Fact.*]—Where a person manufactures and sells an article for use by a limited class of skilled persons under a name that is not his but the name, well known to such class, under which an established firm manufactures and sells a similar article, an injunction to restrain him will not be granted unless deception has in fact resulted.

Decision of Warrington, J. (55 Sol. Jo. 348; 28 R. P. C. 252) reversed.
CLAUDIUS ASH, SON & Co. v. INVICTA MANUFACTURING Co., LD., 28 R. P. C. 597—C. A.

See also I. (1), *supra*.

(2) By Colourable Imitation of Name.

[No paragraphs in this vol. of the Digest.]

(3) By Colourable Imitation of Label Design, or Get-up.

See also No. 5, *supra*.

7. *Imitation—Get-up of Article—Laundry Blue on Stick—Trader’s Name not Marked on Article.*]—The appellants had for many years manufactured and sold laundry blue and tints put up in little bags, not marked with their names, with a stick protruding for the convenience of immersing and mixing the contents with water without staining the fingers. The appellants claimed that the presence of the stick had come to be a means by which the public recognised, and were in the habit of asking for, their goods. No other makers used this stick till the respondents began to do so in 1909, with goods manufactured by them, on which their name appeared. In an action claiming an injunction:—

HELD—that while the respondents might be at liberty to use a stick in the preparation of their goods, they must, if they did so, sufficiently distinguish their goods by the form of the stick or by other means from the goods sold by the appellants, and inasmuch as they had not done this the appellants were entitled to an injunction.

Decision of C. A. ([1911] 1 Ch. 5; 80 L. J. Ch. 154; 103 L. T. 579; 27 T. L. R. 101; 28 R. P. C. 53) reversed.

W. EDGE & SONS, LD. v. W. NICCOLLS & SONS, [LD., [1911] A. C. 693; 80 L. J. Ch. 745; 105 L. T. 459; 27 T. L. R. 555; 55 Sol. Jo. 737; 28 R. P. C. 582—H. L.

(4) Passing off Generally.

See also No. 11, *infra*.

8. *Substitution of Goods—Accidental and Inadvertent Substitution—“Trap” Orders—Delay in Delivery of Particulars of Occasions Relied On—Injunction Refused—Costs.*]—In 1906, M.E.P., a trading corporation, discontinued stocking and selling L’s goods, and in their place offered goods of their own manufacture, the shop assistants being instructed at the time to explain to customers that only M.E.P.’s goods were sold, and to push their sale. In July, 1910, L. sent a number of their employees to M.E.P.’s shops with orders for L’s goods. L. alleged that in several instances M.E.P.’s goods were supplied without any explanation being offered, or the notice of the customer being drawn to the substitution. In August, 1910, L. instituted an action for an injunction to restrain the passing-off of M.E.P.’s goods for L’s goods; but particulars of the instances alleged were not delivered to the defendants until December, 1910.

HELD—that in so far as there had been any substitution of M.E.P.’s goods for L’s goods, it was inadvertent, and not part of a deliberate policy of fraud, and that, on the defendants undertaking that their goods should not be supplied in response to orders for the plaintiffs’

II. Deception—Continued.

goods without the consent of the purchaser thereto being first obtained, no injunction should be granted; and that, as the plaintiffs had been guilty of negligence in delivering particulars of the alleged "trap" orders, there should be no order as to costs.

Dictum of Farwell, L.J., in *Ripley v. Griffiths* (1902) 19 R. P. C. 590 followed.

LEVER BROTHERS, LD. v. MASBRO EQUITABLE [PIONEERS SOCIETY, LD., 56 Sol. Jo. 161—Joyce, J.

9. *Pens—Common Shape—Boxes not Likely to Deceive—Use of Word "Patent"—Collateral Misrepresentation.*—The defendants made and sold pens of the same shape as those made by the plaintiffs, stamped them with the same numbers, and put them in boxes resembling the plaintiffs' boxes. The plaintiffs' goods were stamped with the word "patent," though they were not patented.

HELD—that the shapes of the pens were common to the trade, and that the boxes were not likely to deceive, and therefore the plaintiffs' case failed.

HELD, ALSO—that had the plaintiffs made out a case, the use of the word "patent" was only a collateral misrepresentation, on which the defendants could not have relied.

PERRY & CO., LD. v. T. HESSIN & CO., 56 [Sol. Jo. 176—Eve, J.

III. CONDUCT FACILITATING DECEPTION.

[No paragraphs in this vol. of the Digest.]

IV. MISREPRESENTATIONS BY ADVERTISEMENT. ETC.

See II., *supra*.

V. FALSE TRADE DESCRIPTION: MERCHANDISE MARKS ACT, 1887.

10. *Application of Trade Description to Goods—Bottle with Brewer's Name Embossed Used for Bottling Beer of Another Brewer—Correct Label—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 5, sub-ss. 1, 2.*—By sect. 5, sub-sect. 1, of the Merchandise Marks Act, 1887, "A person shall be deemed to apply a . . . trade description" (which by sect. 3, sub-sect. 3, includes any name of a person) "to goods who—(c) encloses . . . any goods which are sold . . . in . . . any covering . . . to which a . . . trade description has been applied." Sub-sect. 2: "The expression 'covering' includes any . . . bottle."

The appellant, a bottler of beer, having in the course of his business come into possession of certain bottles belonging to the F. Brewery Company and embossed with that company's name, filled them with beer brewed by Bass & Co., placed Bass & Co.'s labels upon them, and sold the contents as being Bass & Co.'s beer:—

HELD—that the appellant had applied a false trade description, namely, the F. Brewery Company's name, to the beer none the less because the presence of the Bass labels on the bottles would prevent any reason-

able purchaser from supposing that he was buying anything but Bass's beer.

STONE v. BURN, [1911] 1 K. B. 927; 80 [L. J. K. B. 560; 103 L. T. 540; 74 J. P. 456; 27 T. L. R. 6—Div. Ct.

VI. PRACTICE.**(1) In General.****11. Account of Profits—Stay Pending Appeal.]**

—In passing off actions it is not the practice to stay an account of profits pending an appeal, unless irreparable injury would otherwise be caused.

COLEMAN & CO., LD. v. STEPHEN SMITH & CO., [LD., [1911] 2 Ch. 572; 28 R. P. C. 645—Eady, J.

See also S. C., No. 5, *supra*.

(2) Costs.

See No. 8, *supra*.

(3) Trifling Offences.

[No paragraphs in this vol. of the Digest.]

VII. MISCELLANEOUS.

12. *Unauthorised User of Royal Arms—Evidence—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 68.*—Sect. 68 of the Trade Marks Act, 1905, which prohibits the unauthorised user of the Royal Arms in connection with any trade, business, calling, or profession, is intended to prevent the spreading of a belief among the public generally which might lead to an increase of prestige to the business of the person improperly making use of the Royal Arms; and an injunction will be granted under the section to prevent an unauthorised user of the Royal Arms by persons in connection with their business in such a manner as to lead to the belief that such user was authorised notwithstanding that such user is not accompanied by the words "by appointment."

A witness may, under the section, give evidence that, on seeing the Royal Arms exhibited on the premises, a belief was created in his mind that the defendants had authority to use them.

ROYAL WARRANT HOLDERS' ASSOCIATION v. [EDWARD DEANE AND BEAL, LD., [1912] 1 Ch. 10; 105 L. T. 623; 28 T. L. R. 6; 56 Sol. Jo. 12—Warrington, J.

TRAMWAYS AND LIGHT RAILWAYS.

I. BYE-LAWS	COLL. 626
II. CONSTRUCTION AND MAINTENANCE	627
III. PURCHASE BY LOCAL AUTHORITY	628
IV. MISCELLANEOUS	629

[No paragraphs in this vol. of the Digest.]

See also COMPULSORY PURCHASE; INCOME TAX, No. 14; NEGLIGENCE, Nos. 16, 17; PRACTICE, No. 20.

I. BYE-LAWS.

1. *Distance between One Car and Another following—Bye-Law Leaving Regulation of*

I. Bye-laws—Continued.

Distance to Police—Mandamus—Sufficiency of Interest—Manchester Corporation Tramways Act, 1900 (63 & 64 Vict. c. cxcxi.), s. 44—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 46.—Sect. 44 of the Manchester Corporation Tramways Act, 1900, provides that the Manchester Corporation shall, with regard to certain tramways taken over by them, make bye-laws under the Tramways Act, 1870, "prescribing the distances at which carriages using the tramways shall be allowed to follow one after the other."

HELD—that a bye-law, whether or not sanctioned by the Board of Trade, which left the regulation of such distances to the police was not a bye-law made in compliance with sect. 44 of the special Act.

HELD, ALSO—that the "National Motor Carriage and Horse Owners Accident Insurance Union, Limited," who had opposed the bill which became the special Act and had obtained the insertion of sect. 44, were sufficiently interested in the matter to be entitled to a *mandamus* directed to the corporation to make bye-laws in compliance with the special Act.

R. v. MANCHESTER CORPORATION, EX PARTE [WISEMAN, 80 L. J. K. B. 263; 104 L. T. 54; 75 J. P. 73; 9 L. G. R. 129—Div. Ct.]

II. CONSTRUCTION AND MAINTENANCE.

2. *Lease of Track—Repair—Contract Between Lessor and Contractor—Negligence of Contractor—Injury to Passengers—Liability of Contractor to Indemnify Lessee Against Claims.*—The Birmingham Corporation leased a certain part of a tramway which they were entitled to work under statutory powers to the plaintiffs. It was a term of the said lease that any repairs which became necessary to the track should be effected by the corporation, subject to the licence of the plaintiffs. Pursuant to a licence duly obtained, the corporation employed the defendant to relay a portion of the track which was leased to the plaintiffs. The running of trams was to continue during the operations. In carrying out this work the contractor was guilty of negligence, as a result of which a tramcar was derailed and overturned, and a number of passengers conveyed by the plaintiffs were injured. The plaintiffs, having compensated the passengers by payment of damages, sought to recover the amounts so paid.

HELD—that, the acts of the defendant having injuriously affected both the proprietary rights of the plaintiffs as lessees of the tramway and also their rights of passage on the highway, the defendant was liable to indemnify the plaintiffs.

CITY OF BIRMINGHAM TRAMWAYS CO., LD. v. [LAW, [1910] 2 K. B. 965; 80 L. J. K. B. 80; 103 L. T. 44; 74 J. P. 355; 8 L. G. R. 667—Lawrence, J.]

3. *Private Act—Parliamentary Deposit—Abandonment of Tramroad Scheme—Compensation for Owners of Land Rendered Less Valuable by Abandonment—Non-Construction of Embankment on Marsh Land.*—A tramway

company, being about to apply for an Act giving them power to construct a tramroad, entered into an agreement with H. whereby H. agreed not to oppose the bill, and the company agreed, if they obtained the Act, to construct and maintain an embankment to carry the tramroad over marsh land belonging to H., and so to prevent the ingress of tidal water on the land. The company obtained the Act, which contained a provision that the Parliamentary deposit made on application for the Act should, if the tramroad were not completed, be applied, *inter alia*, as compensation for persons whose property had been rendered less valuable by the commencement, construction, or abandonment of the tramroad. Subsequently the proposed tramroad was abandoned.

HELD—that the non-construction of the embankment was not a necessary consequence of the abandonment of the tramroad, and therefore that H.'s property was not rendered less valuable by the abandonment within the meaning of the company's Act so as to entitle him to claim compensation out of the Parliamentary deposit.

In re Ruthin and Cerrig-y-Druoidion Railway Act (1886) 32 Ch. D. 438 applied.

Decision of Warrington, J., reversed.

IN RE SOUTHPORT AND LYTHAM TRAMROADS [ACT, 1900, EX PARTE HESKETH, [1911] 1 Ch. 120; 80 L. J. Ch. 137; 104 L. T. 154—C. A.]

III. PURCHASE BY LOCAL AUTHORITY.

4. *Sale by Promoters to Company—Assignment not Approved by the Board of Trade—Compulsory Purchase by Local Authority—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 43—Tramways Orders Confirmation (No. 2) Act, 1895 (58 & 59 Vict. c. ci.), ss. 46, 48.*—In 1895 a provisional order was obtained by certain promoters for the construction of tramways in the borough of West Hartlepool. This order was confirmed by an Act passed in 1895 by which it was provided (*inter alia*) that the defendant corporation might purchase the undertaking after the lapse of fourteen years. The Act provided that no sale of the undertaking by the promoters should have any validity until after approval by the Board of Trade. In August, 1896, the promoters entered into an agreement with the British Electric Traction (Pioneer) Company, Limited, to sell the undertaking to them; and by a further agreement made in October, 1896, the undertaking purported to be sold to the plaintiff company. Neither of these agreements was approved by the Board of Trade. The construction of the tramway, which was commenced in March, 1897, was duly completed. In January, 1910, the defendant corporation gave notice to the promoters and also to the plaintiff company or "other the promoters," requiring them to sell their undertaking. The matter was referred to an arbitrator, who assessed the value at £12,963. In an action by the company "and all others the promoters of the Hartlepool Electric Tramways Order, 1895," to recover this sum, the corporation contended that they could make no valid payment to the original promoters who now had no

III. Purchase by Local Authority—Continued.
legal title to the tramway ; and that they could not pay anything to the plaintiff company, inasmuch as the assignment had not been approved by the Board of Trade.

HELD—that by assignment from the promoters the tramway company had, to the knowledge of the Board of Trade, by succession, themselves become the promoters of the undertaking, and that that was quite sufficient to enable them to sell the tramway.

Decision of *Bray, J.* (75 J. P. 507 ; 9 L. G. R. 1098) affirmed.

HARTLEPOOL ELECTRIC TRAMWAYS 'CO. L.D. v. [HARTLEPOOL CORPORATION, 75 J. P. 537—C. A.]

IV. MISCELLANEOUS.
[No paragraphs in this vol. of the Digest.]

TRANSVAAL.
See DEPENDENCIES AND COLONIES.

TREASON.
See CRIMINAL LAW AND PROCEDURE.

TREASURE TROVE.
See CROWN PRACTICE.

TRESPASS.
See also ANIMALS, No. 5 ; COMMONS, No. 1 ; DEPENDENCIES, No. 32 ; RAILWAYS, No. 11 ; WATERS, No. 3.

1. Justification—Act done in Preservation of Property—Shooting Rights—Extinguishing Fire—Actual Necessity—Reasonable Act.]—If a fire breaks out on land, the tenant of the sporting rights is entitled to adopt such reasonable methods for extinguishing the fire as, in all the circumstances, may be necessary for the preservation of his sporting rights ; and in such a case he will not be rendered liable for trespass merely because in fact, *i.e.* in the result, it is found that the methods adopted by him were not actually necessary.

Decision of Div. Ct. ([1911] 2 K. B. 837 ; 80 L. J. K. B. 1008 ; 104 L. T. 718 ; 127 T. L. R. 396) reversed (*Vaughan Williams, L.J., dissenting*).
COPE v. SHARPE, 132 L. T. Jo. 178 ; *Times*, December 20th, 1911—C. A.

See S. C. GAME, No. 5.

TRIAL.
See CRIMINAL LAW AND PROCEDURE ; EVIDENCE ; PRACTICE AND PROCEDURE.

TRINIDAD.
See DEPENDENCIES AND COLONIES.

TROVER AND CONVERSION.
1. Detinue—Trover—Demand and Refusal before Writ.]—The plaintiff's watch, which had been bought some years previously at the defendant's shop, was stolen from the plaintiff, who gave information of the theft to the defendant. Eventually the watch was purchased in a jeweller's shop in the country by one B., who sent it to the defendant for an opinion as to whether it was a genuine antique watch. The defendant wrote both to the plaintiff and to B., telling them that it was the watch which had been stolen, and inquiring as to their wishes in the matter. No answer was sent by the plaintiff to the defendant's letter, but a few days afterwards a clerk of the plaintiff's solicitors called at the defendant's shop and, on being shown the watch, demanded that it should be then and there handed over to him, and, on this request being refused, at once served the defendant with a writ in detinue which he had taken out on behalf of the plaintiff about two hours previously.

HELD (*Vaughan Williams, L.J., dissenting*)—that upon the facts given in evidence there had been no wrongful refusal on the part of the defendant to return the watch to the plaintiff before the date of the issue of the writ, and that the plaintiff had no cause of action against the defendant either in detinue or in trover.

CLAYTON v. LE ROY, [1911] 2 K. B. 1031 ; 81 [L. J. K. B. 49 ; 105 L. T. 430 ; 75 J. P. 521 ; 27 T. L. R. 479—C. A.]

TRUCK ACTS.
See MASTER AND SERVANT ; WORK AND LABOUR.

TRUSTS AND TRUSTEES.

	COL.
I. IN GENERAL	631
II. ACCOUNTS	632
III. APPOINTMENT OF TRUSTEES	632
IV. BREACH OF TRUST	632
V. CONSTRUCTIVE TRUSTS	635

[No paragraphs in this vol. of the Digest.]

Trusts and Trustees—Continued.	COL.
VI. DISTRIBUTION	635
[No paragraphs in this vol. of the Digest.]	
VII. INVESTMENTS	635
VIII. PRACTICE	636
IX. RESULTING TRUST	637
X. TRUSTS FOR SALE, ETC.	637
[No paragraphs in this vol. of the Digest.]	
XI. PUBLIC TRUSTEE	637

See also BANKRUPTCY, No. 26; DEEDS, No. 1; HIGHWAYS, No. 11; INCOME TAX, No. 15; INSURANCE, No. 11; LIMITATION OF ACTIONS, Nos. 6, 7; SETTLEMENTS; SOLICITORS, No. 18; WILLS.

I. IN GENERAL.

1. Indemnity—Contribution—Partners Trustees of Lease for Partnership—Transfer of Business to Company—Liability on Covenants in Lease—Right to Indemnity from Cestui que Trust—Novation.—Although the assignment by a *cestui que trust* of his absolute beneficial interest to a new *cestui que trust* terminates the trust relationship between the trustee and the old *cestui que trust*, it does not terminate the personal liability of the old *cestui que trust* to indemnify the trustee against contingent claims that may arise under existing contractual liabilities, and the mere fact that the trustee concurs and takes an indemnity from the new *cestui que trust* against those liabilities does not in itself amount to novation.

M. and C., two members of a partnership, became lessees of premises as trustees for the partnership. The business of the firm was transferred to a company, which twenty-two years afterwards became insolvent. M. was the survivor of the two lessees, and his executors had no defence to an action by the lessor on the covenants in the lease, and paid £5,750 and costs £124 7s. in discharge of their liability. In a test case they now claimed contribution from C. in proportion to his share of the partnership.

The defendants said that, as the trustees had assented to the property being transferred to the company, they could not now get an indemnity from anyone except the company. Further, it was argued that at the date of the assignment to the company, the trustees held freehold property and other assets exceeding in value the liability under the lease, and that they should have required a sinking fund or other security against their liability under the lease before handing the property over to the company.

HELD—that there was no novation as regards the lease, that the transfer of the business to the company did not release the partnership, the previous *cestui que trust*, and that as all the partners had been parties to the agreement for sale to the company under which the trustees could not have retained anything as security, the plaintiffs were entitled to contribution.

Jerris v. Wolferstan ((1874) L. R. 18 Eq. 18, 24), *Fraser v. Murdoch* ((1881) 6 App. Cas. 855,

872), and *Hardoon v. Belilios* ([1901] A. C. 118, 123) applied.

MATTHEWS v. RUGGLES-BRISE, [1911] 1 Ch. [194; 80 L. J. Ch. 42; 103 L. T. 491—Eady, J.]

2. Separate Trusts for Benefit of the same Cestui que Trust—Maintenance—Equitable Contribution.—Where there are two estates held under separate trusts, in different terms, in the hands of separate and independent trustees, from both of which such payments as the trustees think fit are to be made for the maintenance of the same *cestui que trust*, the doctrine of equitable contribution does not apply so as to apportion the payments between the two estates.

SMITH v. COCK, [1911] A. C. 317; 80 L. J. P. C. [98; 104 L. T. 1—P. C.]

II. ACCOUNTS.

See No. 16, *infra*.

III. APPOINTMENT OF TRUSTEES.

See also Nos. 17, 21, *infra*.

3. New Trustees—Will—Power to Appoint—Reference to Chambers to Appoint New Trustees—Right to Nominate.—An order directing a reference to chambers to appoint new trustees of a will suspends the power given by the will to appoint new trustees, but it does not disqualify the donee of the power from nominating fit and proper persons to be new trustees, and in the absence of misconduct the Court will appoint the persons nominated by the donee of the power in preference to those nominated by other parties.

In re Gadd ((1883) 23 Ch. D. 134) followed.

IN RE SALES, SALES v. SALES, [1911] W. N. [194; 55 Sol. Jo. 838—Eve, J.]

4. Judicial Trustee Retiring—Power to Appoint New Trustee—Judicial Trustee Act, 1896 (59 & 60 Vict. c. 35)—Judicial Trustee Rules, 1897, r. 23—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (1), (4).—Under sect. 10 of the Trustee Act, 1893, a retiring judicial trustee has not power to nominate a new trustee to the extent that the Court is bound to appoint his nominee unless the latter is an improper person.

IN RE JOHNSTON, MILLS v. JOHNSTON, [1911] [W. N. 234; 131 L. T. Jo. 86—Neville, J.]

See also S. C. No. 21, *infra*.

IV. BREACH OF TRUST.

See also Nos. 10, 11, *infra*; SCOTTISH LAW, No. 5.

5. Authority to Solicitor to Receive Trust Moneys—Permitting Retainer for Unreasonable Time—Knowledge as to Solicitor's Unreliability—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 17, sub-ss. 1, 3.—In order to bring into operation sect. 17, sub-sect. 3, of the Trustee Act, 1893 (which provides that nothing in the section is to exempt a trustee from any liability which he would have incurred if the Act had not been passed, in case he permits money, received by a solicitor under a deed containing a receipt for

IV. Breach of Trust—Continued.

the money, to remain in the latter's hands or under his control for a period longer than is reasonably necessary to enable him to pay the same to the trustee), the circumstances must be such that the trustee either knew or ought to have known of the receipt of the money.

X. and Y., who were trustees, were in July, 1902, told by B., their solicitor, that a mortgage forming part of the trust property would shortly be paid off and that the mortgage money would be placed to the joint account of the trustees at a bank, and they accordingly sent to B. a reconveyance of the mortgaged property (which contained in the body of it a receipt for the mortgage money) executed by them. B. then proceeded, on the mortgagor's behalf, to sell the property in lots, and he from time to time received the purchase-money for the lots, which money he ultimately misappropriated; but before any of the money had been received by B., X. died. Y. trusted in B.'s honesty and *bona fide* believed him to be a proper person to be entrusted with the mortgage money, and did not before December 4th, 1902, know that B. had received any of the money. In the meantime Y. frequently inquired of B. whether he had received the money and was told by him that he had not received it. By December 4th, 1902, it had become impossible to recover the money which B. had received.

The case was argued on the footing that the authority conferred by the reconveyance justified the receipt by B. by instalments and that the death of X. before any money was received by B. did not affect the question of Y.'s liability.

HELD (without deciding that the case had been argued on the proper footing, but on the assumption that it had been so argued)—that Y. was not liable to replace the misappropriated trust funds.

Quære, whether the death of X. revoked the authority conferred on the solicitor by the delivery to him of the reconveyance.

Quære, whether that delivery justified the receipt of the mortgage money by instalments.

The question under what circumstances a trustee ought to regard a solicitor as an unreliable person to receive trust moneys considered.

IN RE SHEPPARD, DE BRIMONT v. HARVEY, [1911] 1 Ch. 50; 80 L. J. Ch. 52; 103 L. T. 424; 55 Sol. Jo. 13—Parker, J.

6. Will—Power to Employ Agents—Clause Indemnifying Executors against the Acts of Agents—Payment of Duty—Cheque Payable to Solicitor Misappropriated—Executor's Liability—Ordinary Diligence—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35).—A testator inserted a clause in his will authorising his executors to employ agents, and indemnifying them against such agents' acts and omissions. The surviving executor sent a cheque to the solicitor to the estate, on the representation that the amount was wanted for the payment of estate duty, but made out the cheque in favour of the solicitor himself. The solicitor misappropriated the money.

HELD—that the executor was entitled to be relieved from liability, by virtue of sect. 3 of the Judicial Trustees Act, 1896, for he had acted honestly, with the belief that he could trust the solicitor, and, in view of the clause specially authorising him to employ agents, his conduct could not be called unreasonable.

IN RE MACKAY, GRIESSEMANN v. CARR, [1911] 1 Ch. 300; 80 L. J. Ch. 237; 103 L. T. 755—Parker, J.

7. Executor Specific Legatee and Trustee of Residue—Distinct Trusts—Default in Respect of Residue—Making Good Default—Assignees from Trustee—Specific Legacy not Liable.—An executor and trustee, who was absolutely entitled to a specific legacy subject only to prior life interests therein, was also trustee of the residuary personal estate, which was settled upon trusts under which he took no beneficial interest whatever. He settled part of the legacy while still reversionary and mortgaged the other part. Several years afterwards he misappropriated part of the residue. The legacy having fallen into possession and been transferred into Court in the course of an action for the execution of the trusts of the will, the residuary legatees sought to attach the legacy to make good the default in respect of the residue:—

HELD—that the rule that a defaulting trustee cannot claim any share in the trust estate until he has made good his default, inasmuch as he must be treated as having by anticipation received or retained payment of his share, did not apply to the present case, because the trustee was not entitled to any share or interest in the residue; and that, as the specific legacy and residue were held upon entirely distinct trusts, one fund was not liable to indemnify the other, and the trustee's assignees were, therefore, entitled to the whole legacy free from any lien or equity in respect of the default.

Doering v. Doering ((1889) 42 Ch. D. 203) distinguished.

IN RE TOWNDROW, GRATTON v. MACHEN, [1911] 1 Ch. 662; 80 L. J. Ch. 378; 104 L. T. 634—Parker, J.

8. Outstanding Debts—No Steps to Require Payment—Loss—Receipt—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 21, sub-s. 2—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3 (1).—Trustees, directed by the will of a testator who died in May, 1896, to convert and invest his estate, having allowed a sum lent by the testator and a debt due in respect of the sale of part of the testator's assets to remain uncollected and without action brought until 1903, the debtor being a director of an important company and possessed of house and share property, held liable for the consequent loss, the Court not being satisfied that no loss had accrued to the testator's estate from the neglect by the trustees of their duty.

Dictum of Sir J. Romilly, M.R., in *Clack v. Holland* (1854), 19 Beav. 262, 271) applied.

IV. Breach of Trust—Continued.

The concluding words of sect. 21, sub-sect. 2, of the Trustee Act, 1893 (56 & 57 Vict. c. 53), involve the exercise of active discretion on the part of the trustee allowing time for payment and not the mere passive attitude of leaving matters alone. Loss which has arisen from carelessness or supineness of the trustee is altogether outside the sub-section.

A beneficiary gave executors a receipt for a share of the estate "as shown by the executor's books" and accounts.

HELD—that the receipt was not a release to them in respect of the balance of debts due to the testator's estate then remaining uncollected.

HELD, FURTHER—that in the circumstances, the trustees, having allowed the matter of calling in the debts to drift for six years, had not acted reasonably and were not entitled to be relieved under sect. 3 of the Judicial Trustees Act, 1896.

IN RE GREENWOOD, GREENWOOD v. FIRTH, 105 [L. T. 509—Eve, J.]

V. CONSTRUCTIVE TRUSTS.

[No paragraphs in this vol. of the Digest.]

VI. DISTRIBUTION.

[No paragraphs in this vol. of the Digest.]

VII. INVESTMENTS.

See also WILLS, No. 48.

9. *Mortgage on Business Premises—Amount Advanced.*—There is no rule that trustees on investing trust money on a mortgage of business premises ought not to lend more than one-half of the value of those premises. The authorities only show that trustees are well advised in not lending more than one-half of the value in such a case.

PALMER v. EMERSON, [1911] 1 Ch. 758; 80 [L. J. Ch. 418; 104 L. T. 557; 27 T. L. R. 320; 55 Sol. Jo. 365—Eve, J.]

10. *Mortgage—Reliance on Valuer's Report—Duty of Valuer—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 4 (1)—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 8 (1).*—It is not incumbent on trustees before investing trust funds on mortgage to find out whether the valuer employed by them has at any time advised or acted for the mortgagor; it is enough if in the matter in question the valuer has been instructed and employed independently of the mortgagor.

A valuer employed by trustees to report on property, upon which they propose to invest trust funds, should advise them not only as to the actual value of the property, but also as to the proportion which in his opinion they may safely advance in the particular case.

The mere fact that part of the property is let on weekly tenancies does not make the investment improper.

IN RE SOLOMON, NORE v. MEYER, 28 T. L. R. [28; 56 Sol. Jo. 109—Warrington, J.]

11. *Retention of Investments—Loss—Liability of Trustees.*—Trustees who have a trust for sale and conversion, with powers at their discretion to postpone conversion and to retain

existing investments, are not under any duty to make or preserve evidence that they have exercised such discretion. The assumption is, if they postpone conversion and retain existing investments, that they have properly exercised their discretion.

Observations on the duties of trustees with respect to the retention of investments.

IN RE ODDY, CONNELL v. ODDY, 104 L. T. 128—[Joyce, J.]

12. *Power to Invest in Stocks or Securities of Colony or Dependency—Stocks of Province of Canada.*—A power given to trustees to invest in the stocks or shares of a British colony or dependency does not authorise an investment in stock issued by the Provinces of the Dominion of Canada.

Decision of Eve, J. ([1911] 2 Ch. 58; 80 L. J. Ch. 467; 104 L. T. 671; 27 T. L. R. 429; 55 Sol. Jo. 499) affirmed.

IN RE MARYON-WILSON'S ESTATE, [1911] W. N. [222; 28 T. L. R. 49—C. A.]

13. *Power to Invest in Particular Investments—Implied Power to Vary Investments—Power of Sale—Real Estate.*—In an ordinary case a direction to trustees to invest in particular investments implies a power to vary investments, and this implied power gives the trustees a power to sell real estate in which they have power to invest for the occupation of a tenant for life.

IN RE POPE'S CONTRACT, [1911] 2 Ch. 442; [80 L. J. Ch. 692; 105 L. T. 370—Neville, J.]

See S. C. SETTLEMENTS, No. 2.

14. *Unauthorised Investment—Dual Position of Tenant for Life and Trustee—Restoration of Capital with Interest—Capital and Income—Claim to Excess of Interest.*—A tenant for life is not liable to make good to the capital fund any excess of interest which he obtains from unauthorised investments provided the capital fund is not diminished by reason of such investments, and this principle holds good even though the tenant for life may happen to be also a trustee.

IN RE HOYLES, ROW v. JAGG (No. 2), [1911] [W. N. 214; 105 L. T. 663; 56 Sol. Jo. 110—Eady, J.]

VIII. PRACTICE.

See also No. 21, *infra*; EXECUTORS, No. 27; PRACTICE, Nos. 26, 28; SOLICITORS, No. 25.

15. *Settlement—Action for Administration—Compromise—Fund Carried to Separate Account.*—In the compromise of an action by the mortgagee of a life interest under a settlement against the trustees for administration, it was agreed (*inter alia*) that certain funds subject to the trusts of the settlement be paid into court by the trustees to an account entitled "The shares of the P. Company and its incumbancers, subject to the life interest of H. and her mortgagee."

HELD—that the carrying over to the separate account was not equivalent to a transfer of the

VIII. Practice—Continued.

stocks and securities or payment of the proceeds thereof by the trustees to the company.

The separate account is merely the machinery by which the Court has carried its declaration into effect, and so long as the fund remains in Court, that machinery is under the control of the Court.

Thorndike v. Hunt ((1859) 3 De G. & J. 563) distinguished.

Decision of Neville, J. ([1910] W. N. 163; 79 L. J. Ch. 640; 103 L. T. 131) affirmed.

Cloutte v. Storey, [1911] 1 Ch. 18; 80 [L. J. Ch. 193; 103 L. T. 617—C. A.

IX. RESULTING TRUST.

See PRACTICE, No. 26.

X. TRUSTS FOR SALE, ETC.

[No paragraphs in this vol. of the Digest.]

XI. PUBLIC TRUSTEE.

See also EXECUTORS, No. 9.

16. Audit of Trust Accounts—Costs of Audit—Order for Payment—Appeal from Public Trustee—Public Trustee Act, 1906 (6 Edw. 7, c. 55), ss. 10, 13.]—An appeal lies under sect. 10 of the Public Trustee Act, 1906, from an order made by the Public Trustee under sect. 13 (5) of the Act ordering the costs of an investigation and audit of the trust accounts to be borne by the beneficiaries who applied for such investigation and audit. On such an appeal, the Public Trustee should not be made a party.

Before making an order for the payment of costs, the Public Trustee ought to hear the parties if they desire to be heard.

IN RE ODDY, [1911] 1 Ch. 532; 80 L. J. Ch. [404; 104 L. T. 338; 27 T. L. R. 312; 55 Sol. Jo. 348—Parker, J.

17. Sole Trustee—Trust Instrument Requiring not less than Three Trustees—Appointment of Public Trustee as Sole Trustee by Court—Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 10, 25—*Public Trustee Act, 1906* (6 Edw. 7, c. 55), ss. 3, 5—*Settled Land Act, 1882* (45 & 46 Vict. c. 38), ss. 39, 45.]—The Court has jurisdiction to appoint the Public Trustee as sole trustee even when the power to appoint new trustees in the trust instrument provides that the number of trustees shall be not less than three.

The Public Trustee can be appointed sole trustee for the purposes of the Settled Land Acts.

IN RE LESLIE'S HASSOP ESTATES, [1911] 1 Ch. [611; 80 L. J. Ch. 486; 27 T. L. R. 352; 55 Sol. Jo. 384; *sub nom.* IN RE HASSOP SETTLED ESTATES, IN RE LESLIE'S WILL, 104 L. T. 563—Eve, J.

18. Public Trustee Act, 1906 (6 Edw. 7, c. 55), ss. 10, 13, 14 — *Public Trustee Rules, 1907*, rr. 37–39.]—Observations on the Public Trustee Act, 1906, ss. 10, 13, and 14, and the Public Trustee Rules, 1907, rr. 37–39.

IN RE ODDY, CONNELL v. ODDY, 104 L. T. 128—[Joyce, J.

19. Appeal from Public Trustee—Public Trustee Act, 1906 (6 Edw. 7, c. 55), ss. 10, 13.]—Sect. 10 of the Public Trustee Act, 1906, applies to all decisions of the Public Trustee in discharge of his judicial functions under the Act.

The Public Trustee ought not to be joined as a party to proceedings by way of appeal from his decision in discharge of his judicial functions.

Quere, whether an appeal does not lie from every act or omission of the Public Trustee in the performance of his administrative functions under the Act.

IN RE ODDY, [1911] 1 Ch. 532; 80 L. J. Ch. [404; 104 L. T. 338; 27 T. L. R. 312; 55 Sol. Jo. 348—Parker, J.

20. Administration of Small Estate by Public Trustee—Gross Capital Value less than £1,000—Time for Ascertaining Gross Value—Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 3.]—Sect. 3 of the Public Trustee Act, 1906, applies throughout to the estates of deceased persons, and has no application to trusts created by settlements.

The date of the application to the Public Trustee under sect. 3 to undertake the administration of a small estate, and not the date of the testator's or intestate's death, is the determining date for ascertaining whether the gross value of the estate is less than £1,000.

IN RE DEVEREUX, TOOVEY v. PUBLIC TRUSTEE, [1911] 2 Ch. 545; 80 L. J. Ch. 705; 105 L. T. 407; 27 T. L. R. 574; 55 Sol. Jo. 715—Eve, J.

21. Judicial Trustee Retiring—Appointment of Public Trustee by Court—Practice—Judicial Trustee Rules, 1897, r. 24 (1).]—Before an order is made appointing the public trustee a trustee in the place of a retiring judicial trustee the Court should make an order that there should cease to be a judicial trustee.

IN RE JOHNSTON, MILLS v. JOHNSTON, [1911] [W. N. 234; 131 L. T. Jo. 86—Neville, J.

ULTRA VIRES.

See COMPANIES; LOCAL GOVERNMENT; PUBLIC AUTHORITIES; RAILWAYS.

UMPIRES.

See ARBITRATION.

UNDUE INFLUENCE.

See EQUITY, No. 1.

UNLAWFUL ASSEMBLIES.*See* CRIMINAL LAW AND PROCEDURE.**USURY.***See* MONEY AND MONEY-LENDERS.**VACCINATION.***See* PUBLIC HEALTH.**VAGRANCY.***See* CRIMINAL LAW AND PROCEDURE.
No. 77.**VALUERS AND
APPRAISERS.***See* TRUSTS, No. 10.**VENDOR AND PURCHASER.***See* SALE OF LAND.**VETERINARY SURGEONS.***See* MEDICINE, III.**VICTORIA.***See* DEPENDENCIES AND COLONIES.**VOIDABLE ASSIGNMENTS,
CONVEYANCES, AND
SETTLEMENTS.***See* BANKRUPTCY; FRAUDULENT AND
VOIDABLE CONVEYANCES.**VOLUNTARY ASSOCIA-
TIONS.***See* CHARITIES; CLUBS.**VOLUNTEERS.***See* ROYAL FORCES; SETTLEMENTS.**WAGES.***See* MASTER AND SERVANT.**WAREHOUSES AND
WAREHOUSING.***See* BAILMENT.**WARRANTIES.***See* AUCTIONS; CARRIERS, No. 1; FOOD
AND DRUGS; SALE OF GOODS.**WASTE.***See* REAL PROPERTY; SETTLEMENTS
TRUSTS.**WATERMAN.***See* METROPOLIS; WATERS AND WATER-
COURSES.**WATERS AND WATER-
COURSES.**

	COL.
I. IN GENERAL	610
II. RIVERS.	
(a) Ownership of Soil	641
(b) Pollution	641
(i.) <i>Manufacturing Refuse</i>	641
[No paragraphs in this vol. of the Digest.]	
(ii.) <i>Sewage</i>	641
(iii.) <i>Procedure</i>	644
[No paragraphs in this vol. of the Digest.]	
(c) Repairing Banks, etc.	644
[No paragraphs in this vol. of the Digest.]	
(d) Rights of Riparian Owners	644
(e) River Thames	644
[No paragraphs in this vol. of the Digest.]	
III. SEASHORE.	
(a) In General	644
(b) Rights over Foreshore	645
[No paragraphs in this vol. of the Digest.]	
<i>See also</i> EASEMENTS No. 4; INCOME TAX, No. 3; SALE OF LAND, No. 9; SEWERS, No. 1; WATERWORKS, No. 1.	
I. IN GENERAL.	
1. <i>Watercourse—Liability to Fill up or Cover Over—Land Laid Out for Building—Land Abutting—Tottenham Urban District Council</i>	

I. In General—Continued.

Act, 1900 (63 & 64 Vict. c. cclxxxiv., s. 64.)—

—A council were empowered to require the owner of land laid out for building on which any watercourse or ditch was situate, or which abutted on any watercourse or ditch, to execute such works as were in their opinion necessary to wholly or partially fill up or cover over such watercourse or ditch before proceeding to build. R. agreed to purchase some land abutting on a watercourse in the district, and submitted plans for a factory which were approved subject to his culverting the watercourse. R. agreed to sell a strip of land abutting on the watercourse to O., and conveyed the strip to O. on the same day as the land was conveyed to him. The council, after the date of the conveyance, gave R. and O. notice to culvert the watercourse, but R. and O. ignored the notice and R. erected the factory. The council brought an action asking for a declaration that the defendants were not entitled to commence, proceed with or maintain the factory without doing the works required by the council, and for an injunction restraining them from building.

HELD—that R.'s land did not abut on the watercourse, and that O., whose land did abut on the watercourse, did not intend to build, and that the action failed.

ATTORNEY-GENERAL v. ROWLEY BROTHERS, 75 (J. P. 81 ; 9 L. G. R. 121—Eady, J.

2. Navigable Non-tidal River—Public Right of Navigation—Mooring and Anchoring—Right of Member of Public to Moor Permanently, to Bank or Alveus, Boats Kept for Hire.]—Though the public right of navigation of a navigable non-tidal river includes as a reasonable incident thereof the right to moor or drop anchor in the course of such navigation, a boat-hirer is not entitled, in virtue of his rights as a member of the public, to keep permanently attached to the bed of such a river a raft used by him for the purposes of his business, or to moor permanently to the bed or bank boats kept for hire, and he will be restrained from so doing at the instance of the proprietor of the bank and bed of the river.

CAMPBELL'S TRUSTEES v. SWEENEY, 48 Sc. L. R. [1023—Ct. of Sess.]

II. RIVERS.

See also FISHERIES, No. 5.

(a) Ownership of Soil.

See No. 2, supra ; No. 3, infra.

(b) Pollution.**(i.) Manufacturing Refuse.**

[No paragraphs in this vol. of the Digest.]

(ii.) Sewage.

3. Local Authority—Contamination of River—Meaning of "Tidal"—Riparian Owners—Ownership of River Bed—Nuisance—Trespass—Right of Action by Reversioner—Liability of Sanitary Authority—Public Health Act, 1875

(33 & 39 Vict. c. 55)—Local Government Act, 1894 (56 & 57 Vict. c. 73.)—The sewers of the defendant local authority discharged contaminating matter in a crude state into the river bounding the plaintiff's property.

HELD (upon the several defences raised)—that the river in question being influenced by exceptionally high tides did not make it "tidal," so as to affect the plaintiff's claim as riparian owner ; that the fact of another person having been accustomed to license the fishing on both sides of the stream was not conclusive proof of that person owning the whole bed of the river, and, even if it were, did not affect the plaintiff's right to have the flow of the water past his banks in its natural state of purity ; and that, although the plaintiff had let his fields immediately bordering on the river to a yearly tenant not a party to the action, he was not thereby disentitled to sue, inasmuch as the nuisance was one which, if not stopped, would continue of itself, and was therefore an injury to the reversion and gave a right of action to the reversioner.

HELD, FURTHER—that, although the defendants had not themselves laid the sewers, but had taken them over, practically in their existing state, from another public body, yet, having taken them under a statute which transferred with them "all powers, duties, and liabilities," they were answerable to the plaintiff exactly as would have been their predecessors.

Rylands v. Fletcher ((1868) L. R. 3 H. L. 330) applied.

Glossop v. Heston and Isleworth Local Board ((1879) 12 Ch. D. 102) considered.

JONES v. LLANRWST URBAN DISTRICT COUNCIL, [1911] 1 Ch. 393 ; 80 L. J. Ch. 145 ; 103 L. T. 751 ; 75 J. P. 68 ; 27 L. R. 133 ; 55 Sol. Jo. 125 ; 9 L. G. R. 222—Parker, J.

4. Effluent from Sewage Disposal Works—Liability of Persons Controlling Works although Sewer Vested in Local Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 13.]—The defendants were the lessces of a number of cottages which drained into sewage disposal works, of which a firm of builders were the lessees. Sewage escaped from the disposal works into a stream which flowed through a farm belonging to the plaintiff, and injured cattle and pasturage belonging to him. In an action by the plaintiff for damages and an injunction evidence was given that at the time when the damage was caused the defendants were in control of the sewage disposal works. The local authority had passed the plans for the sewers "subject to the drainage being carried out to the satisfaction of the surveyor," but there was no evidence that the surveyor had ever expressed such satisfaction.

HELD—that, even assuming that the sewage disposal works and the pipes connected therewith were sewers vested in the local authority under sect. 13 of the Public Health Act, 1875, there being evidence upon which the learned judge could come to the conclusion, which he did, that it was by the act or default of the defendants themselves that the sewage was in

11. Rivers—Continued.

fact being discharged into the brook, his decision could not be interfered with.

TITTERTON v. KINGSBURY COLLIERIES, LD., 104 [L. T. 569; 75 J. P. 295; 9 L. G. R. 405—Div. Ct.]

5. *Local Authority*—"Stream" or "Sewer"—*Intermittent Stream*—*No Summer Flow*—*Tidal Tributary*—*Deposit of Sewage on Banks*—*Public Nuisance*—*Old Culvert over Part of Stream*—*Non-maintenance of Culvert*—*Flooding of Private Land*—*Continuous Injury*—*Damages*—*Injunction*—*Public Health Act, 1875* (38 & 39 Vict. c. 55), ss. 17, 19, 299—*Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1.—The discharge of sewage into the channel of an intermittent stream may have the effect of converting it into a sewer although the natural flow of the pure water is not cut off. No rule to the contrary is established by *West Riding of Yorkshire Rivers Board v. Reuben Garnt & Sons, Ltd.* ((1902) 67 J. P. 183) or *West Riding of Yorkshire Rivers Board v. Preston* ((1904) 69 J. P. 1).

Crude sewage was discharged by a local authority into the channel of an intermittent stream which ran in an old culvert through private land and then in the open air alongside that land to a tidal river, the stream itself being tidal up to the point where the sewage entered. The local authority had not interfered with the natural flow of the stream, which only ran during the winter. In the summer the channel conveyed nothing but sewage with the exception of the tidal water with which it was diluted twice a day. Sewage was deposited on the banks of the open channel to such an extent as to constitute a public nuisance when the tide was out, and owing to the defective state of the culvert the land was constantly flooded with pent up sewage water at spring tides.

HELD—(a) that notwithstanding the summer flow of fresh water and the daily flow of tidal water the channel was a sewer; (b) that the periodical inundation of sewage from a sewer out of repair was a continuing cause of action, and that the relator's right to damages was not limited by the Public Authorities Protection Act, 1893, sect. 1, to damages in respect of the floodings within six months before action; (c) that the local authority were liable to an injunction restraining them from occasioning a nuisance by discharging crude sewage through the open channel, and from discharging it or permitting it to flow from the culvert or sewer on to the relator's land.

Semble—Although sect. 299 of the Public Health Act, 1875, provides a statutory remedy by complaint to the Local Government Board in the case of a local authority making default "in the maintenance of existing sewers" it does not preclude a private individual from obtaining damages and an injunction against that local authority in respect of a common law nuisance arising from that default.

ATTORNEY-GENERAL v. LEWES CORPORATION, [1911] 2 Ch. 495; 27 T. L. R. 581; 55 Sol. Jo. 703—Eady, J.

(iii.) Procedure.

[No paragraphs in this vol. of the Digest.]

(c) Repairing Banks, etc.

[No paragraphs in this vol. of the Digest.]

(d) Rights of Riparian Owners.

See also Nos. 2, 3, 4, *supra*.

6. *Pollution of Water by Sewage*—*Nuisance*—*Trespass*—*No Actual Damage*—*Injunction*.—The owner of land upon the banks of a river can maintain a suit to restrain the pollution of the water of the river without showing that the pollution has caused him actual damage.

JONES v. LLANRWST URBAN DISTRICT COUNCIL, [1911] 1 Ch. 393; 80 L. J. Ch. 145; 105 L. T. 751; 75 J. P. 68; 27 T. L. R. 133; 53 Sol. Jo. 125; 9 L. G. R. 222—Parker, J.

See also S. C. No. 3, *supra*.

7. *Higher and Lower Riparian Owners*—*Interference with Bed of River*—*Removal of Obstructions Consolidated in Bed of River*.—A riparian owner is not entitled to alter the level of a river by removing obstructions which by lapse of time have become embedded and consolidated in and form part of the bed of the river, if thereby he diminishes or increases the flow of water which a millowner lower down has been enjoying owing to the diversion of the stream or the alteration in its level by the obstructions.

Decision of Div. Ct. (27 T. L. R. 483; 55 Sol. Jo. 601) reversed.

FEAR v. VICKERS, 27 T. L. R. 558; 55 Sol. Jo. 688—C. A.

(e) River Thames.

[No paragraphs in this vol. of the Digest.]

III. SEASHORE.

See also LOCAL GOVERNMENT, No. 4.

(a) In General.

8. *Low-water Mark of Sea*—*Statutory Boundary*—*Extension of Boundaries*—*Erection of Artificial Structures below Low-water Mark*.—In an action regarding liability for assessments:—

HELD—that the boundary of a burgh, fixed by statute as "low-water mark" of the sea, followed that mark as it varied from time to time through natural fluctuation or was altered by artificial operations; and that, accordingly, piers consisting of solid structures of stone, erected so as to extend below the natural low-water mark, were situated wholly within the burgh.

LEITH DOCKS COMMISSIONERS v. LEITH MAGISTRATES, [1911] S. C. 1139; 48 S. C. L. R. 919—Ct. of Sess.

9. *Foreshore*—*Alluvion*—*Accretions caused by the Recession of the Line of Ordinary High Water*—*When Owner of the Lands Adjoining is*

III. Seashore—Continued.

Entitled to such Accretions—Test.—The decision of the House of Lords in *Gifford v. Yarborough* (5 Bing. 163) conclusively determines that where land is added to the seashore by the gradual and imperceptible action of natural causes, the owner of the lands adjoining the accretions acquires in them a good title against the Crown, notwithstanding the existence of marks or bounds or other evidence by which the former, or a former, line of ordinary high water can be ascertained.

The real question in every such case of accretion is whether during the process of accretion the progress of the accretion can be ascertained.

ATTORNEY-GENERAL FOR IRELAND *v.* M'CARTHY,
[1911] 2 I. R. 260—Div. Ct., Ireland.

(b) Rights over Foreshore.

[No paragraphs in this vol. of the Digest.]

WATERWORKS.

I. IN GENERAL	COL. 645
[No paragraphs in this vol. of the Digest.]	
II. CHARGES FOR WATER	645
III. COMPENSATION WATER	646
[No paragraphs in this vol. of the Digest.]	
IV. DIVIDENDS	646
V. SUPPLY OF WATER	647

See also RATES, No. 15.

I. IN GENERAL.

[No paragraphs in this vol. of the Digest.]

II. CHARGES FOR WATER.

See also Nos. 3, 6, *infra*.

1. *Stream Feeding Watercourse to Ironworks*—Statutory Diversion of Stream by Local Authority for Waterworks—Statutory Grant of Compensation Water—Limited Quantity for "any Working Day"—Non-user of Compensation Water for Long Period—Alleged Abandonment—*Llanfrechfa Upper Local Board Waterworks Act, 1884* (47 & 48 Vict. c. clii.), ss. 7, 8.]—In 1884 a local authority, the predecessors in title of the defendants, were empowered by a special Act to construct a reservoir, and for that purpose to divert a stream which fed a watercourse that flowed for some distance across the plaintiff's lands and supplied a company (his lessees) with water for the purposes of their works. Sect. 8 of the Act provided that the local authority should permit "the owners, lessees and occupiers" of the works to take compensation water along the watercourse not exceeding a specified quantity "during any working day," and imposed liability to damages on the local board if they failed to permit the due quantity

of compensation water to flow into the watercourse. In 1890 the company ceased to use their works and subsequently dismantled them and surrendered their lease to the plaintiff. Meanwhile the watercourse gradually fell into disuse and great disrepair, its banks became broken down in places, so that the water escaped and did not reach the site of the works; and in 1909 the defendants diverted the stream and prevented water from flowing into the watercourse. In an action by the plaintiff claiming a declaration of his right to the compensation water under the Act and an injunction to restrain the defendants from diverting or interfering with the flow of water to the watercourse:—

HELD—that on the true construction of the section the grant of compensation water was to the plaintiff and others as "the owners lessees and occupiers" of the works, and was not limited to the purposes for which the water was to be used; and that "any working days" meant the days of the week other than Sundays and holidays.

HELD ALSO—that the non-user of the compensation water during the time that it was not wanted was not of itself evidence of any abandonment by the plaintiff of his rights under the section, and that he was entitled to the uninterrupted flow of the specified quantity of compensation water to the site of the works notwithstanding that the company had ceased to carry on business there.

But held, that, as no present damage had resulted to the plaintiff from the diversion of the water, an injunction would not be granted.

HANBURY *v.* LLANFRECCHA UPPER URBAN DISTRICT COUNCIL, 75 J. P. 307; 9 L. G. R. 360—Neville, J.

III. COMPENSATION WATER.

[No paragraphs in this vol. of the Digest.]

IV. DIVIDENDS.

2. *Share Capital Divided into Different Classes of Shareholders—Maximum Dividend—Payment of Back Dividends*—*Weymouth Waterworks Acts, 1855 and 1897, s. 27*—*Waterworks Clauses Act, 1847* (10 Vict. c. 17), s. 75.]—The provisions of the Waterworks Clauses Act, 1847, sects. 75 *et seq.*, which relate to the payments of a waterworks company's dividends refer to the maximum amount which the company can lawfully distribute by way of dividend, and do not refer to the rights of the shareholders in the company *inter se*.

The original share capital of a waterworks company was a share capital in respect of which, by incorporation of sect. 75 of the Waterworks Clauses Act, 1847, the prescribed rate of dividend was 10 per cent. By a private Act another class of shares was created, with a prescribed rate of dividend 5 per cent. Sect. 27 of the latter Act provided that "the company shall not in any one year make out of their profits any larger dividend on the additional capital to be raised under the powers of this Act than £5 in respect of every

IV. Dividends—*Continued.*

£100 actually paid up of such capital, whether issued as ordinary or preference capital, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said sum of £5 per cent. per annum." There was such a deficiency in both classes of shares, as contemplated by this section. The questions for the determination of the Court were whether it was allowable for the company to pay back dividends in respect of one class of shares without at the same time providing a corresponding dividend in respect of the other class of shares, both classes of shares being *ex hypothesi* in arrear, and, further, how such arrears should be paid.

HELD—that the back dividends could be paid, and that the proper way of doing it was to treat the extra dividend as a dividend which was payable for the year, and to preserve the same proportions between the total dividends paid to the two classes of shareholders as existed by statute with respect to the maximum dividends; and that this could be done until the arrears on each class of shares has been wiped off.

WEYMOUTH WATERWORKS CO. *v.* COODE AND [HASELL, [1911] 2 Ch. 520; 81 L. J. Ch. 11; 104 L. T. 588—Parker, J.]

V. SUPPLY OF WATER.

See also METROPOLIS, X.; NEGLIGENCE Nos. 5, 7.

3. *Water Rate—Where Owner and not Occupier Liable to Payment—Empty House—Right of Water Company to Cut off Supply—Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21), s. 4.*—By sect. 4 of the Water Companies (Regulation of Powers) Act, 1887, "Where the owner and not the occupier is liable by law . . . to the payment of the water rate in respect of any dwelling-house . . . no water company shall cut off the water supply for non-payment of the water rate":—

HELD—that the words "is liable" refer to a liability at the date when the water rate became due, and that, provided that there was at that date an occupier other than the owner, and that the owner and not the occupier was liable for the payment of that rate, the section prohibits the water company from cutting off the supply for non-payment of the rate even after the occupier has given up possession, and the premises have become vacant.

METROPOLITAN WATER BOARD *v.* BIBBEY, [1911] 2 K. B. 74; 80 L. J. K. B. 977; 104 L. T. 812; 75 J. P. 322; 9 L. G. R. 531—Div. Ct.

4. *Cost of Repair of Communication Pipe—Threat to Cut off Supply—Duress—Right to Recover Cost of Repair—Ownership of Pipe—Onus of Proof—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28, 44, 48–52.*—The plaintiff, having received a notice from the defendants, the local water company, threatening to cut off

his water supply if he did not within forty-eight hours repair a leak in the communication pipe by which his house was supplied, had the pipe repaired and subsequently sued the defendants for the sum expended on its repair as money paid under duress. There was no evidence to show to whom the communication pipe belonged, or by whom and under what statutory provisions, if any, it had been laid down.

HELD—that the plaintiff, having failed to prove that the pipe was the property of the defendants or that the sum expended was really payable by them, could not recover that sum as money paid under duress.

PARNELL *v.* PORTSMOUTH WATERWORKS CO., [75 J. P. 99; 8 L. G. R. 1029—Div. Ct.]

5. *Water Company—Statutory Powers—Agreement for Construction of Mains—Distribution of Water in Statutory Area—Delegation of Powers—Ultra Vires—Ticehurst Water Act, 1902 (2 Edw. 7, c. cxx.)—Waterworks Clauses Acts, 1847 (10 & 11 Vict. c. 17) and 1863 (26 & 27 Vict. c. 93).*—The plaintiffs, a water company incorporated by statute, agreed with the defendants that the latter should, within the statutory area, construct mains and works, collect water rates, and distribute water, which was to be supplied in bulk at a fixed charge by the plaintiff company.

HELD—that this agreement was not a delegation of statutory powers; it was therefore valid, and *intra vires* the company.

TICEHURST AND DISTRICT WATER AND GAS CO., [LD. *v.* GAS AND WATERWORKS SUPPLY AND CONSTRUCTION CO., LD., 55 Sol. Jo. 459—Warrington, J.]

6. *"Private Dwelling-house"—Supply to Workhouse—Bristol Waterworks Act, 1862 (25 Vict. c. xxx.), s. 68.*—A workhouse is not a "private dwelling-house" within sect. 68 of the Bristol Waterworks Act, 1862.

HELD, therefore—that the Bristol Guardians were not entitled to a supply of water for their workhouse for domestic purposes at the rates prescribed by the section.

BRISTOL GUARDIANS *v.* BRISTOL WATERWORKS [Co., [1911] W. N. 208; 28 T. L. R. 33; 56 Sol. Jo. 34—Eve, J.]

WAYS.

See EASEMENTS; HIGHWAYS.

WEIGHTS AND MEASURES.

I. INSPECTORS.

[No paragraphs in this vol. of the Digest.]

II. SALE OF COAL.

[No paragraphs in this vol. of the Digest.]

Weights and Measures—Continued.

III. WEIGHING AND WEIGHING MACHINES.
[No paragraphs in this vol. of the Digest.]

IV. MEASURES.
[No paragraphs in this vol. of the Digest.]

V. MISCELLANEOUS.
[No paragraphs in this vol. of the Digest.]

See FOOD, No. 16.

WESTERN AUSTRALIA.

See DEPENDENCIES AND COLONIES.

WHARVES.

See MASTER AND SERVANT; SHIPPING AND NAVIGATION.

WILD BIRDS PROTECTION.

See ANIMALS.

WILLS.

	COL.
I. TESTAMENTARY CAPACITY	651
[No paragraphs in this vol. of the Digest.]	
II. EXECUTION.	
(a) Attestation	651
(b) Generally	651
[No paragraphs in this vol. of the Digest.]	
(c) Signature of Testator	651
[No paragraphs in this vol. of the Digest.]	
(d) Soldiers' and Seamen's Wills	651
[No paragraphs in this vol. of the Digest.]	
(e) Testamentary Documents	651
III. INCORPORATION OF DOCUMENTS	651
[No paragraphs in this vol. of the Digest.]	
IV. REVOCATION.	
(a) Destruction	652
[No paragraphs in this vol. of the Digest.]	
(b) Generally	652
[No paragraphs in this vol. of the Digest.]	
(c) Revocation of Gift	652
V. ALTERATIONS AND ERASURES	652
[No paragraphs in this vol. of the Digest.]	
VI. MISTAKE AND AMBIGUITY.	
(a) Ambiguity	652
(b) Clerical Error	652
[No paragraphs in this vol. of the Digest.]	
(c) Evidence of Intention	652
(d) Misdescription	652
[No paragraphs in this vol. of the Digest.]	
(e) Mistake of Fact	652
VII. CONSTRUCTION AND INTERPRETATION OF TERMS	652

VIII. SECRET TRUST	COL. 660
[No paragraphs in this vol. of the Digest.]	
IX. ELECTION	660
X. ADEMPMENT	660
XI. SATISFACTION	661
XII. HOTCHPOT	661
XIII. SUBSTITUTIONAL GIFT	662
XIV. CLASS GIFTS	662
XV. LAPSE	663
XVI. ABSOLUTE GIFT	664
XVII. CONDITIONS.	
(a) Condition Precedent or Subsequent	664
[No paragraphs in this vol. of the Digest.]	
(b) Contingent Gift	664
(c) Forfeiture	664
[No paragraphs in this vol. of the Digest.]	
(d) Heirlooms	664
[No paragraphs in this vol. of the Digest.]	
(e) Name and Arms Clauses	664
[No paragraphs in this vol. of the Digest.]	
(f) Restraint of Marriage	664
[No paragraphs in this vol. of the Digest.]	
(g) General	664
XVIII. VESTING	665
XIX. DIVESTING	666
XX. PERPETUITIES AND REMOTENESS	666
XXI. CREATION OF ESTATE TAIL	667
XXII. DIRECTIONS TO TRUSTEES.	
(a) Investment	667
(b) Maintenance	668
(c) Miscellaneous	668
[No paragraphs in this vol. of the Digest.]	
(d) Precatory Trusts	668
XXIII. CONVERSION.	
(a) Leaseholds	668
[No paragraphs in this vol. of the Digest.]	
(b) Power of Postponement	668
[No paragraphs in this vol. of the Digest.]	
(c) Tenant for Life and Remainderman	668
[No paragraphs in this vol. of the Digest.]	
XXIV. PAYMENT OF DEBTS AND LEGACIES.	
(a) Abatement	668
[No paragraphs in this vol. of the Digest.]	
(b) Apportionment	668
(c) Charge on Real Estate	668
[No paragraphs in this vol. of the Digest.]	
(d) Exoneration of Mortgaged Property	668
[No paragraphs in this vol. of the Digest.]	
(e) Interest on Legacies	668
(f) Specific Legacies	669
XXV. SURVIVORSHIP	669
[No paragraphs in this vol. of the Digest.]	

Wills—Continued.

COL.

XXVI. EXERCISE OF POWER OF APPOINTMENT	669
XXVII. ANNUITIES	670
XXVIII. CHARITABLE BEQUESTS	670
XXIX. CONDITIONAL WILL	670
[No paragraphs in this vol. of the Digest.]	
XXX. MUTUAL WILLS	670
XXXI. CONFLICT OF LAWS	670
XXXII. MISCELLANEOUS	670
[No paragraphs in this vol. of the Digest.]	

See also DEPENDENCIES, Nos. 7, 28, 31, 35; INTOXICATING LIQUORS, No. 8; RENT-CHARGES, No. 2; SETTLEMENTS: TRUSTS.

I. TESTAMENTARY CAPACITY.

[No paragraphs in this vol. of the Digest.]

II. EXECUTION.

(a) Attestation.

1. *Attestation by Legatee—Gift Over—Failure of Prior Gift—Acceleration—Wills Act, 1837* (1 Vict. c. 26), s. 15.]—A testator made a bequest of chattels real to T., with a gift over in the event of his dying without issue to J. and K. T. attested the execution of the will so that the bequest to him became void. He was alive and unmarried. There was no residuary gift in the will.

HELD—that the gift over to J. and K. was not accelerated, and that it was only in the event of the death of T. without issue that they would be entitled to the chattels real.

Decision of Barton, J., affirmed.

KEARNEY v. KEARNEY, [1911] 1 I. R. 137; 45 [I. L. T. 44—C. A., Ireland.

(b) Generally.

[No paragraphs in this vol. of the Digest.]

(c) Signature of Testator.

[No paragraphs in this vol. of the Digest.]

(d) Soldiers' and Seamen's Wills.

[No paragraphs in this vol. of the Digest.]

(e) Testamentary Documents.

2. *Delivery of Instrument as Escrow—Assignment of Lease—Delivery to Take Effect on Death of Assignor.*—A document purporting to be a deed of conveyance by a person of his own property, which is delivered by him on a condition that it shall only become operative upon his death, is a testamentary document, and therefore cannot take effect as an escrow.

FOUNDLING HOSPITAL (GOVERNORS AND GUARDIANS) v. CRANE, [1911] 2 K. B. 367; 80 L. J. K. B. 853; 105 L. T. 187—C. A.

See S.C. under DEEDS.

III. INCORPORATION OF DOCUMENTS.

[No paragraphs in this vol. of the Digest.]

IV. REVOCATION.

(a) Destruction.

[No paragraphs in this vol. of the Digest.]

(b) Generally.

[No paragraphs in this vol. of the Digest.]

(c) Revocation of Gift.

See also No. 6, *infra*.

3. *Revocation of Life Interest—Effect on Gifts in Remainder.*—A revocation of a life interest does not of itself operate to revoke the interests in remainder.

IN RE MCEACHARN, GAMBLES v. MCEACHARN, [55 Sol. Jo. 204—Eve, J.

V. ALTERATIONS AND ERASURES.

[No paragraphs in this vol. of the Digest.]

VI. MISTAKE AND AMBIGUITY.

See also VII. and No. 42, *infra*.

(a) Ambiguity.

See also Nos. 4, 24, *infra*.

(b) Clerical Error.

[No paragraphs in this vol. of the Digest.]

(c) Evidence of Intention.

4. *Extrinsic Evidence—Instructions to Solicitor—Conversation—Admissibility.*—A testatrix bequeathed a part of her residuary estate to "The Royal Hospital for Women." There was no hospital of which that was the correct designation, but there were several institutions whose titles were more or less similar thereto.

HELD—that evidence of a conversation between the testatrix and her solicitor when he received instructions to prepare her will, in which the testatrix expressed an intention to benefit a particular institution, was not admissible to ascertain which hospital was entitled to the bequest.

IN RE BATEMAN, WALLACE v. MAWDSLEY, 27 [T. L. R. 313—Joyce, J.

5. *Blank Left for Names of Trustees.*—A blank was left in a will as if for the purpose of inserting the names of trustees, which were duly inserted in other parts of the will.

HELD—that in the absence of evidence that the testator intended to fill up the blank, the Court could not say that the names were omitted inadvertently.

IN RE MCEACHARN, GAMBLES v. MCEACHARN, [55 Sol. Jo. 204—Eve, J.

(d) Misdescription.

[No paragraphs in this vol. of the Digest.]

(e) Mistake of Fact.

6. *Codicil—Revocation—False Assumption of Fact—Inconsistent Legacies—Construction.*—The revocation of a bequest grounded on an assumption of fact which is false takes effect,

VI. Mistake and Ambiguity—Continued.

unless as a matter of construction the truth of the fact is the condition of the revocation.

A testatrix by the first codicil to her will directed certain legacies, bequeathed thereby, to be paid out of "my V. bonds." By a second codicil she stated "I find I have a sum of £700 V. stock which I have not put into my will, and I wish to be disposed of as follows," and then proceeded to make a number of bequests of the "V. stock," which was shown to be the same as the "V. bonds" referred to in the former instrument.

HELD—that the bequest of "V. stock" in the second codicil being grounded on the false assumption that the testatrix had not made any previous disposition of the stock, and being contingent and conditional on the truth of that assumption, failed, and that the doctrine of revocation by inconsistent subsequent disposition did not apply.

IN RE FARIS, GODDARD *v.* OVEREND (No. 2), [1911] 1 I.R. 469—Meredith, M.R., Ireland,

VII. CONSTRUCTION AND INTERPRETATION OF TERMS.

See also Nos. 4, 6, *supra*; Nos. 28, 35, 41, 44, 52, *infra*; CHARITIES, No. 3; REAL PROPERTY, No. 1; SETTLEMENTS, No. 23.

7. *Construction—Bequest of Fund "absolutely," followed by Directions as to Distribution—"Specific Wish"—Precatory Trust.*—By his will a testator made a bequest in these terms: "To my father if living at my death and, if not to my younger sister . . . I bequeath absolutely £5,000, but it is my specific wish that the said sum shall be distributed as follows: £4,000 to the Caterham Congregational School, Surrey; £500 to the Milton Mount Congregational School, Gravesend, Kent; £500 to be given to ten (or more as may be deemed proper) deserving young people connected with Latimer Congregational Chapel, Stepney, London, E., eight of whom shall be females. . . ."

HELD—that the legacy of £5,000 was bequeathed free from any trust or legal obligation.

"Precatory trust cases" discussed.

Decision of Joyce, J., reversed.

IN RE ATKINSON, ATKINSON *v.* ATKINSON, 80 [L. J. Ch. 370; 103 L. T. 860—C. A.

8. *Construction—"Earnest Desire"—Precatory Trust.*—A testator by his will gave the whole of his estate to his wife, and expressed his "earnest desire" that a weekly payment of thirty shillings should be made to A. out of the estate.

HELD—that there was no precatory trust for A.

DOBIE *v.* EDWARDS, 80 L. J. P. 119; 27 [T. L. R. 464; *sub nom.* IN THE GOODS OF HANMER, DOBIE *v.* EDWARDS, 55 Sol. Jo. 537—Deane, J.

9. *General Legacy in Will—Pious Wish—Precatory Trust of such Legacy Contained in*

Codicil.—The words "I desire the £300 which I have bequeathed to A. to be divided by her on her death, as she shall think fit, amongst the daughters of my cousin B" create a trust capable of being enforced.

IN RE JEYONS, JEYONS *v.* PUBLIC TRUSTEE, [56 Sol. Jo. 72—Eady, J.

10. *Construction—Bequest of "the Amount of One Year's Wages"—"Servants (Indoor and Outdoor)."*—A testator bequeathed "to each of my servants (indoor and outdoor)," provided they had complied with certain conditions laid down in the will, "the amount of one year's wages."

HELD—that servants in receipt of weekly wages were entitled to the benefit of this bequest, as well as those engaged by the year.

IN RE RAVENSWORTH, RAVENSWORTH *v.* TINDALE ([1905] 2 Ch. 1) distinguished.

Decision of Neville, J. (80 L. J. Ch. 313; 104 L. T. 412) affirmed.

IN RE EARL OF SHEFFIELD, RYDE *v.* BRISTOW, [1911] 2 Ch. 267; 80 L. J. Ch. 521; 105 L. T. 236—C. A.

11. *Construction—"Issue"—Joint Tenancy or Tenancy in Common—Words of Severance—Powers of Advancement and Maintenance.*—A testator gave his residuary estate to trustees upon trust for A. for life, and on A.'s death to divide between and amongst the members of a class then living, and their issue *per stirpes* if any of them should be then dead; and he gave his trustees powers of maintenance and advancement. The power of maintenance was a power, "during the minority of any legatee entitled" under the will, to apply to maintenance the whole or part of "the annual income to which any such infant legatee shall for the time being be actually or presumptively entitled." The power of advancement was a power, "from time to time during the minority of any male legatee" under the will, to apply to his advancement "all or any part of the capital to which such legatee shall be presumptively entitled for the time being."

HELD—that "issue" in this case was limited to children of members of the class, and that (on the construction of the maintenance and advancement clauses) such children took as tenants in common.

BENNETT *v.* HOULDSWORTH, [1911] W. N. 47; [104 L. T. 304; 55 Sol. Jo. 270—Joyce, J.

12. *Construction—Gift to Issue—Per stirpes—Determination of stirpes.*—A testator gave property in trust for the issue of his deceased aunts, C. E. H. and H. M. M., living at his decease, and he added, "such issue to take *per stirpes* and not *per capita*." There were thirteen separate families of the issue.

HELD—that the words "*per stirpes*" referred to the issue and not to the two aunts, and that consequently the property was divisible into thirteen shares, one for each family of issue.

ROBINSON *v.* SHEPHERD ((1863) 4 De G. J. & S. 129) followed.

VII. Construction and Interpretation of Terms —Continued.

Gibson v. Fisher ((1867) L. R. 5 Eq. 51) not followed.

IN RE DERING, NEALE *v.* BEALE, [1911] W. N. [187; 105 L. T. 404—Warrington, J.

13. Construction—Gift of Parent's Share to Issue—Distribution per Stirpes or per Capita—Intentions of Testator.—A testator who died in 1902 gave the life interest in his residue to his wife, and the remainder "unto and equally between and amongst the following relatives of my said wife, namely, R. B., the brother, C. F., the sister, or their children if dead and the lawful issue of any child who shall have died and such of the children of E. E. and G. S. B., deceased, or their issue as shall be living at the death of my said wife, such children or issue nevertheless to take amongst them only the share to which their deceased parent would have been entitled if living." C. F. died in 1906 and the testator's widow in 1910.

HELD—that the residue must be taken to be divided into four parts, and that the shares of C. F., E. E., and G. S. B. must be distributed amongst their respective children or grandchildren, the distribution being *per stirpes* in each generation.

IN RE ALCHORNE, EADE *v.* BOURNER, 130 [L. T. Jo. 528—Parker, J.

14. Construction—Absolute Gift or Estate for Life—Words Sufficient to Pass Realty.—A testator by his will bequeathed his property in these terms: "I devise and bequeath to my wife all the property of which I am possessed, whether it be leasehold property, stock-in-trade, accounts in my books, machinery, goods of every description, and furniture, to hold and to use for her benefit and the benefit of any of my children under the age of twenty-one years until they reach that age, and if she deem it advisable to dispose of any of the said property she may do so at her will, and at her death whatsoever property may remain shall be equally divided among my children."

HELD—that the testator's real estate passed under the will; and further held, that it went to the wife for life, with a power to dispose of it during her lifetime and then to the children.

ROBERTS *v.* THORP, 56 Sol. Jo. 13—Warrington, J.

15. Construction—"Subject Thereto."—The meaning of the words "subject thereto" in a will must be discovered by an examination of the whole scheme of the will, and must not always be taken to mean subject to all that has gone before such words.

IN RE COLVILE, COLVILE *v.* MARTIN, 105 L. T. [622; 56 Sol. Jo. 33—Eady, J.

16. Construction—"Shall become entitled as aforesaid."—The testator gave a life interest in the income of certain real property to A., and after her death, in the event, which happened, of there being no children of A., to take under the provisions of the will, the *corpus* was to be

conveyed and assured to her three brothers, as tenants in common. But in case all or any of such brothers shall die before becoming "entitled as aforesaid," then she directed that the trustees should convey and assure the share of the brother so dying to the daughters of such brother. The three brothers all survived the testator, but all died in the lifetime of the tenant for life.

HELD—that they had never become "entitled as aforesaid," and that their respective daughters were accordingly entitled to have their respective portions of the property conveyed and assigned to them.

IN RE WHITE, WINDOR *v.* JONES, 56 Sol. Jo. [109—Eady, J.

17. Construction—Arrears of Rent—Accruing Rent—Tithe Rent-charge—Net or Gross Rents—Apportionment Act, 1870 (33 & 34 Vict. c. 35.)—F., who was tenant for life of the P. settled estates, by her will bequeathed "to the person who upon my death shall become entitled in possession to the P. settled estates all arrears of rent in respect of the same estates which shall then be due to me." The testatrix died on March 4th. By the custom of the estate the rents, though due according to the agreements quarterly, were collected half-yearly at Michaelmas and Lady Day:—

HELD—that the bequest included not only all arrears due at the preceding Michaelmas and unpaid, but the rents due at Christmas and the apportioned part accrued from Christmas to the death; that arrears of tithe rent-charge were also included; and that the bequest carried the gross rents without any deductions for collection or outgoings.

IN RE FORD, MYERS *v.* MOLESWORTH, [1911] [1 Ch. 455; 80 L. J. Ch. 355; 104 L. T. 245—Eady, J.

18. Household Effects—Contents of Dwelling-house—Cash—Jewellery—Construction—Cash and Jewellery Deposited at Bank during Testatrix's Illness.—A testatrix, by her will, specifically devised certain jewellery, and gave her residue on trust for her nephews and nieces and their children. By a codicil she devised her dwelling-house, and bequeathed all her "furniture, plate, linen, china, glass, books, pictures, and household effects of every description, and all other the contents of the said dwelling-house, except any articles I may have bequeathed by my said will to my nephew W." At the testatrix's death there were in the house certain jewellery and £40 in Bank of England notes and cash. Other jewellery and £50 in Bank of England notes had been deposited in the bank during the testatrix's illness, but without her instructions, although she was afterwards told.

HELD—that everything in the house passed by the bequest; that the jewellery deposited at the bank was notionally in the house and also passed; but that the £50 had become part of the testatrix's current account, and did not pass.

IN RE LEA, WELLS *v.* HOLT, 104 L. T. 253— [Eady, J.

VII. Construction and Interpretation of Terms —Continued.

19. "*Western Suburb*" — "*Adjacent*" — *Gift to Found Homes for Aged Poor.*]—A testator gave a large sum of money to found homes for aged poor, and directed his trustees to lay out a sufficient part thereof in the purchase of a site "in some or one of the western suburbs of London or in the adjacent country." The trustees proposed to purchase a very eligible site for the purpose near Croydon.

HELD—that the site was not in a western suburb or in the adjacent country.

IN RE WHITELEY, BISHOP OF LONDON v. WHITELEY, 55 Sol. Jo. 291—Eve, J.

20. *Devise of House and Premises*—"In which I now Reside"—*Additional Land Purchased after Date of Will.*]—A testator devised his "house and premises, known as Ankerwyke, in which I now reside," to his wife. Between the date of his will and his death he purchased additional land, which he occupied with the house until his death.

HELD—that the additional land passed under the devise of the house and premises.

IN RE WILLIS, SPENCER v. WILLIS, [1911] 2 Ch. 563; 81 L. J. Ch. 8; 105 L. T. 295; 55 Sol. Jo. 598—Eve, J.

21. "*To my Wife during her Widowhood*" — *Invalid Marriage.*]—The plaintiff, Elizabeth Burniston, whose husband disappeared in 1894 and was not heard of again till 1910, went through a ceremony of marriage in 1903 with the testator. The testator believed himself to be lawfully married to the plaintiff, and only knew that there was a risk that he might not be because her husband who had disappeared in 1894 might still be alive. The testator and the plaintiff lived together as husband and wife till the testator's death in 1906. By his will the testator bequeathed certain things "to my wife Elizabeth," and made other bequests to her "during her widowhood, and after her decease or second marriage" to his daughters.

HELD—that the plaintiff, although not legally the testator's widow, was entitled to enjoy the property until she died or remarried.

IN RE HAMMOND, BURNISTON v. WHITE, [1911] 2 Ch. 342; 80 L. J. Ch. 690; 105 L. T. 302; 27 T. L. R. 522; 55 Sol. Jo. 649—Parker, J.

22. *Construction—Expenses of Education.*]—A testator directed his trustees "to pay the expenses necessary for the education of my children; and it is my desire that my sons A. and J. should have a university education suitable to prepare them for whatever profession they may adopt." A. had graduated as a Bachelor of Medicine, and was in practice near Leeds. He was studying at Leeds University for an additional diploma in Public Health, for which he could not enter until he held his present degree and had been in practice for at least a year. He called upon the trustees to defray his expenses in connection with the Public Health degree.

HELD—that the trustees were not bound to pay these expenses, in respect that they were not incurred by A. in preparing himself for the profession which he had adopted.

DICK'S TRUSTEES v. DICK, 48 Sc. L. R. 325—[Ct. of Sess.]

23. *Construction—Person in loco parentis—Younger Children—Eldest Son—Portions—Period of Distribution—Class when Ascertained—Surplus Income and Accumulations—Maintenance.*]—By his will a grandfather devised an estate to his son W. for life, with remainder to his first and other grandsons (the sons of W.) successively, in tail male, with remainder, if no grandson attained twenty-one, to testator's granddaughter or granddaughters, or such of them as should attain twenty-one or marry, and if more than one, in equal shares as tenants in common in tail, with cross-remainders. The testator charged the estate in favour of grandchildren in these terms: "For the younger children of my said son W., or such of them as shall attain twenty-one, or being daughters, shall marry before that age, that is to say, for one younger child the sum of £3,000, for two younger children the sum of £4,000, equally between them, and for three or more younger children the sum of £5,000 in equal proportions." After the death of his grandfather and father, T., the first-born grandson, became tenant in tail male in possession of the estate and died in 1910, under age and unmarried. There survived him one brother, who thereupon became the tenant in tail male in possession, and two sisters. None of them had attained twenty-one or married. The minors were wards of Court, and there was a sum of about £2,300 in Court representing accumulations of interest on the portions charge of £5,000 provided by the will, which had been lodged by the receiver pursuant to order out of the rents and profits of the estate accruing since T. was in possession as tenant in tail male.

HELD—(1) that the accumulations of interest upon the younger children's portions-charge, after providing for maintenance, belonged to the administratrix of T.; (2) that T. had not qualified to receive a younger child's portion, because he had died before the period of distribution, and had been in the character of "eldest son" in possession of the estate; and that consequently no larger sum than £4,000 could ever be raisable for the purpose of the younger children's portion; (3) that the sum presumptively raisable on foot of the portions-charge did not bear interest during the infancy or spinsterhood of the female minors, but only such annual allowance in lieu of interest as the Lord Chancellor might deem necessary for their reasonable maintenance.

CALDBECK v. CALDBECK, [1911] 1 I. R. 144—[Barton, J., Ireland.]

24. *Construction—"My said Several Children"—Words of Referential Limitation following Devise to "Heirs and Assigns"—Repugnancy—Ambiguity—Rule in Shelley's Case not Applicable.*]—A testator devised freehold lands of S. upon trust to the use of his eldest son H. for life and to the use after the decease

VII. Construction and Interpretation of Terms

—Continued.

of H. to H.'s first and other sons successively in tail male, and in default of such issue male to the daughters of H. successively in tail general, remainder to the brother and sisters of H., share and share alike, during their lives respectively, with like limitations to their issue as were expressed with regard to the issue of H., with ultimate remainder to the testator's brother in fee-simple. He further devised his other freehold lands upon trust to the use and behoof of his said several children and their heirs and assigns, share and share alike, under such limitations and remainders as he had expressed as to the lands of S.

HELD—(1) that H. participated in the devise of the testator's freehold lands other than S. in common with his brother and sisters; and (2) that, by reading "heirs and assigns" as "children," and by analogy to the previous limitations as to lands of S., the absolute gift, otherwise implied by the use of those words, must be cut down to a life estate in common to each of testator's children with an estate in tail male to their issue male, and tail general to their issue female, with cross remainders between them.

IN RE ROSE, SULLIVAN v. ROSE, 44 I. L. T. [256—Barton, J., Ireland.

25. *Specific Bequest of Stock in Company—Allotment of Shares by way of Bonus—Accretion to Subject-matter of Legacy.*—A testatrix bequeathed to A., B., and C. "my one hundred and seventy pounds G. & Co. Ordinary Stock." Between the date of the will and of her death a bonus of one new share for each original share was distributed to the shareholder of G. & Co. and converted into stock. The result of this distribution was to reduce the stock in G. & Co. to half its original value, so that the holding of £340 stock, consisting of her original shares and of the bonus, of which testatrix died possessed was worth no more than her original holding of £170 stock would have been.

HELD—that the £340 stock passed under the bequest of "my one hundred and seventy pounds stock."

IN RE FARIS, GODDARD v. OVEREND, [1911] 1 [I. R. 165—Meredith, M.R., Ireland.

26. *Interest — Specific Bequest of Money Charged on Estate — Mortgage — Interest due at Testator's Death.*—A testatrix made a bequest in the following terms: "As to the charge affecting the D. estate . . . of which only £1,000 is disposable under the terms of my marriage settlement, I direct that my executor shall hold it in trust" for certain persons in certain shares, which she thereby declared. Under her marriage settlement she had power to dispose of a sum of £1,000, part of a charge.

She also devised and bequeathed to G., E., and F. her two mortgages for £1,000 and £900 respectively then affecting certain estates, for their own use absolutely in equal shares, share and share alike.

HELD—(1) that interest due to the testatrix at her death upon the charge did not pass to the legatees under the terms of the bequest, but (2) that interest due to the testatrix under the two mortgages at her death passed with the principal to the legatees.

IN RE FARIS, GODDARD v. OVEREND, [1911] 1 [I. R. 165—Meredith, M.R., Ireland.

27. *"Ten per Cent. of My Money"—Meaning of "Money."*—A testator, by his will, gave 10 per cent. of his money in charity, and "the rest of my property" to his son and daughters, share and share alike.

HELD—that the term "money" in the will should not be construed in a narrow sense, and that it included cash due at the date of the testator's death of which he might obtain immediate payment, and such stocks, shares and securities as could be readily turned into cash after his death, but not capital sums secured by mortgages.

O'CONNOR v. O'CONNOR, [1911] 1 I. R. 263; [45 I. L. T. 94—C. A., Ireland.

VIII. SECRET TRUST.

[No paragraphs in this vol. of the Digest.]

IX. ELECTION.

See SCOTTISH LAW, No. 4.

X. ADEMPTION.

See also LUNATICS, No. 2; POWERS No. 2.

28. *Bequest of 100 £1 Shares — Subsequent Conversion into 1,000 Shares of 2s. each.*—A testator bequeathed "my 100 shares in the Palatine Rubber Syndicate." There was no such company, but there was a company called the Pataling Rubber Syndicate, in which the testator held at the date of his will 100 £1 shares, each of which was by special resolution of the company subsequently sub-divided into ten shares of 2s. each.

HELD—that the 1,000 shares of 2s. each passed under the bequest.

IN RE GREENBERRY, HOPS v. DANIELL, 55 Sol. [Jo. 633—Eve, J.

29. *Bank Shares—Amalgamation with another Bank.*—A testator bequeathed to trustees 23 shares belonging to him in the London and County Bank upon certain trusts. At the date of his will, the testator held 104 shares in the bank, of £80 each, £20 paid. Between the date of the will and the date of the testator's death the London and County Bank was amalgamated with the London and Westminster Bank, the name was changed to the London County and Westminster Bank, and the shares of £80, each £20 paid, were subdivided into four shares of £20, £5 paid.

HELD—that the bequest was not adeemed and that the 23 original shares, or four times that

X. Ademption—Continued.

number since the division of the shares, passed by the bequest.

IN RE CLIFFORD, MALLAM *v.* MCFIE, [1912]
[1 Ch. 29; [1911] W. N. 224; 28 T. L. R. 57;
56 Sol. Jo. 91—Eady, J.]

XI. SATISFACTION.

30. Rule against Double Portions—Gift by Deed—Subsequent Will—Presumption of Satisfaction—Rebutting Circumstances—Difference in Gifts in Value and Certainty.—G. by a voluntary deed, declared that he, his executors or administrators, or such other person or persons as he should by deed or will appoint trustee or trustees of the deed, should stand and be possessed of a sum of £6,958 10s. 1d., secured by mortgage on the D. estate upon trust to receive the annual interest and income, and pay the net income to his sister E. for life or spinsterhood, with other limitations in the case of her death or marriage. The mortgage was a well-secured first mortgage, and the deed contained wide powers of investment. G. received the interest and regularly paid it over to his sister. By a subsequent will he appointed trustees and executors and gave them all his real and personal property upon trust, *inter alia*, to pay to his sister E. the interest on £6,500 for life or until she should marry. The powers of investment were restricted, and the subsequent limitations were different from those of the deed. It was provided by the will that if the testator's securities and investments should so depreciate that they were unable to pay to his sister E. £180 a year, she was only to receive £100 a year, the balance of the income of the £6,500 to be accumulated for the benefit of his sons. By a codicil he increased the gift to his sister E. by £400.

HELD—that assuming the testator had placed himself *in loco parentis* to his sister E., and that there was a presumption of satisfaction, the presumption was rebutted by the difference in point of certainty and value between the obligations of the trust deed and the gift in the will.

IN RE GLEESON, SMYTH *v.* GLEESON, [1911] 1
[I. R. 113—Barton, J., Ireland.]

XII. HOTCHPOT.

31. Advancement—Interest on Advances—Division of Residue so as to Secure Equality of Portions.—A testator by his will, made shortly after his second marriage, gave certain pecuniary legacies upon trusts for the benefit of four of his daughters by his first marriage and gave the residue of his estate, subject to a provision for his widow, upon trust for his said four daughters and the children, if any, of his second marriage in such shares as should equalize the portion of each child, including such child's share under the testator's marriage settlements, the legacies above mentioned, and the share in the residue, provided that in making such division of the residue the funds comprised in his second marriage settlement should be deemed to be divisible among the children of his second marriage immediately on

his death notwithstanding the antecedent life interest of their mother therein. The testator by a codicil, made when he had three children living of the second marriage, after slightly altering the legacies given by the will and increasing the provision for the widow, directed that in the division of the residue certain preferential payments should be made to the children of the second marriage. The testator died in the lifetime of his second wife.

HELD—that the direction to secure equality of portions was a direction affecting capital only and did not involve a direction to charge any of the advanced children with notional interest, and that on the death of the widow the capital sums advanced to the respective children (including the preferential payments out of residue) ought to be brought into hotchpot without any interest thereon in the meantime.

Decision of Parker, J. (101 L. T. 536) affirmed (Buckley, J., dissenting).

IN RE WILLOUGHBY, WILLOUGHBY *v.* DECIES,
[1911] 2 Ch. 581; 80 L. J. Ch. 562; 104
L. T. 907—C. A.]

32. Construction—Power to Advance to Tenants for Life.—A proviso in a will authorising trustees, notwithstanding anything thereinbefore contained—i.e., notwithstanding, *inter alia*, gifts of income to the children, followed by gifts of capital to the grandchildren—to apply moneys out of the capital for or towards the advancement or preferment of the children, limited to a certain amount in the case of each child, is a proviso which contemplates the bringing into account of such sums as were so advanced as against the share of the *stirps* of the child to whom such advancement was made.

IN RE SPARKES, KEMP-WELCH *v.* KEMP-
[WELCH, 56 Sol. Jo. 90—Eady, J.]

33. Advancement Clause—Fee to Architect.—A fee paid to an architect by the testator to enable his son to learn the business of an architect is not an "advancement" for the benefit of the son, and need not be accounted for.

IN RE WATNEY, WATNEY *v.* GOLD, 56 Sol. Jo.
[109—Eady, J.]

XIII. SUBSTITUTIONAL GIFT.

See No. 11, *supra*; No. 34, *infra*.

XIV. CLASS GIFTS.

See also POWERS, No. 9.

34. Class—Collaterals—Death before Testator—Attempt to Include Persons who Predecease Testator Leaving Issue Living at Period of Distribution—Wills Act, 1837 (1 Vict. c. 26), s. 33.—In exercise of a general testamentary power a testatrix appointed trust funds to a class of collaterals who should be living at the period of distribution and by language similar to sect. 33 of the Wills Act, 1837, attempted to include in the class persons who should predecease her leaving issue living at the period of distribution.

XIV. *Class Gifts—Continued.*

HELD—that, sect. 33 being inapplicable to gifts to collaterals, persons who predeceased the testatrix and left issue living at the period of distribution were not effectively included in the class, and, there being no substitutionary gift to their legal personal representatives, their estates were not entitled to share.

IN RE GRESLEY'S SETTLEMENT, WILLOUGHBY
[v. DRUMMOND, [1911] 1 Ch. 358; 80 L. J.
Ch. 255; 104 L. T. 244—Eady, J.]

35. Construction Words of Futurity—Gift to Nephews and Nieces—Gift to Children of Nephew or Niece who should Die in the Lifetime of the Tenant for Life under the Will—Niece Dead at Date of the Will, Leaving a Child.—The child of a niece, dead at the date of the will, of a testator was held entitled to share under a trust “for all my nephews and nieces living at the decease of the said Sarah Waterfall (the tenant for life), as tenants in common in equal shares, provided always that if any of my said nephews and nieces shall die in the lifetime of the said Sarah Waterfall, leaving a child or children who shall survive her, and being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age, or marry under that age, then and in every such case the last-mentioned child or children shall take (and, if more than one, equally between them) the share which his, her, or their parent would have taken of and in the proceeds of my said estate if such parent had survived the said Sarah Waterfall.”

IN RE TAYLOR, TAYLOR v. WHITE, 56 Sol. Jo.
[175—Eady, J.]

36. Relatives of Life Tenant—Special Power of Appointment not Exercised—Time for Ascertainment of Class.—Testatrix bequeathed the income of certain capital moneys upon trust for her son A. for life, and after his death upon trust for his issue as he should appoint, and in case of no such issue the income to be paid to testatrix's daughters B. and C., and her grandson D., for their lives, in such shares as A. should appoint, and on their respective deaths testatrix directed the principal moneys to be transferred “to such relatives of A.'s late father Z. as A. shall by his will appoint.” A., having survived B., died without issue and without exercising the power of appointment given by his mother's will. C. and D. having died later:—

HELD—that the time at which the class of beneficiaries as to the principal moneys (viz., the statutory next of kin of Z.) should be ascertained was as at the death of A., the donee of the power.

Birch v. Wade ((1814) 3 V. & B. 198) followed.

REID v. SWAN, [1911] 1 I. R. 405; 45 I. L. T.
[224—C. A., Ireland.]

XV. **LAPSE.**

See also No. 43, *infra*.

37. Child en Ventre sa Mère—Wills Act, 1837 (1 Vict. c. 26), s. 33.]—After a testator's death a

posthumous child was born to the testator's son, one of the residuary legatees, who had died shortly before the testator.

HELD—that sect. 33 of the Wills Act, 1837, applied, and that the share passed under the legatee's will.

IN RE GRIFFITHS'S SETTLEMENT, GRIFFITHS v.
[WAGHORNE, [1911] 1 Ch. 246; 80 L. J. Ch.
176; 104 L. T. 125—Joyce, J.]

See S. C. No. 52, *infra*.

XVI. **ABSOLUTE GIFT.**

See also Nos. 7, 14, *supra*; Nos. 41, 44, *infra*.

38. Direction to Distribute on Death of Tenant for Life—Proviso—Deceasance—Testing.—A proviso, following a direction to distribute on the death of a tenant for life, that in the event of the death of all objects to whom such distribution is to be made without descendants, there is to be a gift over, does not prevent the objects to whom such distribution is to be made becoming indefeasibly entitled and taking absolutely on the death of the tenant for life.

O'Mahoney v. Burdett ((1874) L. R. 7 H. L. 388) followed.

IN RE MACKINLAY, SCRIMGEOUR v. MACKINLAY,
[56 Sol. Jo. 142—Eady, J.]

XVII. **CONDITIONS.**

See also Nos. 44, 50, *infra*.

(a) **Condition Precedent or Subsequent.**

[No paragraphs in this vol. of the Digest.]

(b) **Contingent Gift.**

See No. 43, *infra*.

(c) **Forfeiture.**

[No paragraphs in this vol. of the Digest.]

(d) **Heirlooms.**

[No paragraphs in this vol. of the Digest.]

(e) **Name and Arms Clauses.**

[No paragraphs in this vol. of the Digest.]

(f) **Restraint of Marriage.**

[No paragraphs in this vol. of the Digest.]

(g) **General.**

39. Gift to Wife while Living Apart from Husband—Wife Deserted at Date of Will.—A gift to a married woman, during such time as her husband should be living apart from her, with a limitation over away from her in the event of their living together again, is not necessarily invalid, as being against public policy, if she was at the date of the testator's will already deserted by her husband.

In re Moore, Trafford v. Maconochie ((1888) 39 Ch. D. 116) distinguished.

IN RE CHARLETON, BRACEY v. SHERWIN, [1911]
[W. N. 54; 55 Sol. Jo. 330—Joyce, J.]

40. Bequest for Augmentation of Benefice—Not to be Held in Plurality—Union of Benefices.—Where there is a bequest to a benefice

XVII. Conditions—Continued.

on condition that it shall never be held in plurality, the condition is not broken by the union of the benefice with another benefice under an Order in Council.

IN RE MACNAMARA'S ESTATE, HEWITT v. JEANS, [104 L. T. 771; 55 Sol. Jo. 499—Eve, J.]

XVIII. VESTING.

See also No. 38, *supra*; REAL PROPERTY, No. 1.

41. *Gift of Capital and Accumulations of Income at Twenty-six—Vested or Contingent—Construction.*—A testator bequeathed certain shares in a company upon trust out of the income thereof to pay his son an annual sum of £3,000 until he should attain the age of twenty-six and, when and so soon as he should attain that age, to hold the shares and the accumulations of income arising therefrom upon trust for his son absolutely. There was no gift over. The son survived the testator and died at the age of twenty-three.

HELD—that as the gift taken as a whole was intended solely for the benefit of the son, he took an absolute vested interest on the death of his father.

Dictum of Wood, V.-C., in *Pearson v. Dolman* (1866) L. R. 3 Eq. 315, 321 approved.

Vandry v. Geddes (1830) 1 Russ. & My. 203 distinguished.

IN RE LORD NUNBURNHOLME, WILSON v. [NUNBURNHOLME, [1911] 2 Ch. 510; 105 L. T. 666; 56 Sol. Jo. 34—Neville, J.]

42. *Limitation to Grandchild E. S. and her Children—Similar Limitation to other Grandchild and her Children at Age of Twenty-one—Intention of Testator to make Limitations Identical—Reference to Children of E. S. "capable of taking"—Power of the Court to Read Words into Will.*—A testator gave real property in trust for his granddaughter Emily, with remainder to her children upon attaining twenty-one, and with remainder over in favour of another grandchild, Esther, and her children. He gave other property to Esther, with remainder to her children, but without specifying that they should attain any age, and with a similar gift over in favour of Emily and her children. The wording of the will pointed to an intention of the testator to make both gifts identical, reference being made to children of Esther "capable of taking," and to their shares "vesting at the same age."

HELD—that the court could not supply words in a will, particularly to prevent vesting, and that a daughter of Esther who died an infant had taken a vested interest.

IN RE LITCHFIELD, HORTON v. JONES, 104 L. T. [631—Parker, J.]

43. *Direction to Pay Income for Three Years after Death to A., Followed by Bequests of Legacies—Death of Legatee Within the Three Years—Vested or Contingent Legacy.*—A trust to sell and pay the annual income arising from such sale to A. during the three years immediately

following the testator's death, and from and after the determination of such three years upon trust to pay out of the capital of the said trust fund legacies to B. and others, gives B. a vested interest in his legacy immediately on the death of the testator. Such a legacy does not lapse by reason of B. dying before the expiration of the period of three years from the testator's death.

IN RE BOAM, SHORTHOUSE v. ANNIBAL, 56 [Sol. Jo. 142—Eady, J.]

44. *Construction—Gift of House to Widow for Life with Remainder to Daughter—Pecuniary Legacy—Absolute Gift in Remainder to Daughter on attaining Twenty-one—Earlier Decease of Daughter.*—A testator gave his house and premises in trust for his wife E. W. during her life, and after her death in trust for his daughter A. W. absolutely. Out of his residue he gave the sum of £25,000 in trust for E. W. during widowhood, and after her death or remarriage in trust for A. W., "to be an absolute interest on her attaining the age of twenty-one years and to be held by her for her sole and separate use and benefit." A. W. died, an infant, in the lifetime of E. W., who died without having remarried.

HELD—that the gift of the house was an absolute one, in which A. W. took a vested interest; but that the daughter's interest in the £25,000 was conditional upon her attaining the age of twenty-one years, and that by her earlier decease it fell into the testator's residue.

IN RE WHITTICK, WHARWICK v. WHITTICK, [130 L. T. Jo. 440—Parker, J.]

45. *Gift to Daughter for Life with Remainder to her Children—Gift Over upon her Dying Without Leaving Issue—Daughter's Issue Predeceasing her.*—By his will, A. G. left property in trust for his daughter F. G. for her life, and after her decease to be divided equally between her children, "but in case of her dying without leaving issue," then to be divided as directed, among his other children and their issue. F. G. married, and had issue two sons only, both of whom predeceased her.

HELD—that the children of F. G. had taken vested interests.

IN RE GOLDNEY AND IN RE DIGTON, CLARKE v. DIGTON, 130 L. T. Jo. 484—Parker, J.]

XIX. DIVESTING.

See No. 38, *supra*.

XX. PERPETUITIES AND REMOTENESS.

See also PERPETUITIES, No. 1.

46. *Remoteness—Trust to Pay Off Mortgage out of Income—Trust for Sale—Mortgage Debt Payable by Instalments.*—A testator devised real estate upon trust out of the surplus rents to pay off the mortgages thereon, and then to sell and divide the proceeds among his children and issue then living. The mortgages were repayable by instalments, which, if duly paid, would discharge the mortgages within a life in being and twenty-one years afterwards.

XX. Perpetuities and Remoteness—Continued.

HELD—that as the trust for sale would not necessarily arise within the prescribed period, the devise was void for remoteness.

IN RE BEWICK, RYLE *v.* RYLE, [1911] 1 Ch. 116; 80 L. J. Ch. 47; 103 L. T. 634; 55 Sol. Jo. 109—Eve, J.

XXI. CREATION OF ESTATE TAIL.

See also SETTLEMENTS, No. 5.

47. *Construction—Devise in Tail—Failure of Issue—Contrary Intention—Absolute Interest in Chattels Real—Wills Act* (7 Will. 4 & 1 Vict. c. 26), s. 29. —A testator, after the Wills Act, and describing each gift as of “all my right, title, and interest” therein, devised and bequeathed real estate to his eldest son J., and to his heirs lawfully begotten. He also bequeathed to J. chattels real; and declared that, in case J. should die without issue lawfully begotten, the lands devised and bequeathed to him should revert to testator’s second son T., and his heirs lawfully begotten. The testator bequeathed to T. chattels real, and declared that in case T. should die without issue lawfully begotten, the lands bequeathed to him were to revert to J. Testator further declared that in case J. or T. should die without issue lawfully begotten, the entire of the said lands should be the property of the survivor or longest liver of them, and that in case both should die without issue, the said lands should revert to the testator’s daughter R., and her heirs lawfully begotten, and that in case J., T., and R. should all die without lawful issue, the lands devised and bequeathed to J. should revert to the second son of testator’s brother A. and to his lawful heirs, but in failure of such issue, then to the next son in priority of age, and so on successively in remainder, and the lands bequeathed to T. should revert to testator’s brother B.’s eldest son and his heirs lawfully begotten, but in failure of such to his second or third son by priority of ages, and so on successively in remainder. And the testator declared it to be his will that neither J. nor T. should sell or dispose of any part of the said lands, but that same should remain the *bond fide* properties of them and their heirs for ever.

HELD—that on the true construction of the will, the operation of sect. 29 of the Wills Act was excluded; that the words “die without issue lawfully begotten” meant indefinite failure of issue; and that consequently under the terms of the bequests of the chattels real, which would have conferred estates tail in real estate, J. and T. took absolute interests in the chattels real respectively bequeathed to them.

WELDON *v.* WELDON, [1911] 1 I. R. 177—C. A., [Ireland].

XXII. DIRECTIONS TO TRUSTEES.

See also SETTLEMENTS, No. 23; SOLICITORS, No. 25.

(a) Investment.

48. *Power to Invest in Preference Stock—Investment in Preference Shares.*—A testator empowered his trustees to invest in preference stock of any company in the United Kingdom.

HELD—that the trustees were not authorised to invest in fully paid preference shares.

IN RE WILLIS, SPENCER *v.* WILLIS, [1911] 2 Ch. 581; 81 L. J. Ch. 8; 105 L. T. 295; 55 Sol. Jo. 598—Eve, J.

(b) Maintenance.

See No. 32, *supra*.

(c) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

(d) Precatory Trusts.

See Nos. 7, 8, 9, *supra*.

XXIII. CONVERSION.

See EXECUTORS, No. 23.

(a) Leaseholds.

[No paragraphs in this vol. of the Digest.]

(b) Power of Postponement.

[No paragraphs in this vol. of the Digest.]

(c) Tenant for Life and Remainderman.

[No paragraphs in this vol. of the Digest.]

XXIV. PAYMENT OF DEBTS AND LEGACIES.

See also No. 1, *supra*; DEATH DUTIES, No. 8; EXECUTORS, IV.; POWERS, No. 1.

(a) Abatement.

[No paragraphs in this vol. of the Digest.]

(b) Apportionment.

49. *Legacy—Annuity—Insufficient Estate.*—The testator left his estate to trustees on trust to convert, and as to one moiety of the proceeds, to hold £2,500 on trust for M. T. for life, and to set aside a sum sufficient to produce an income of £78 per annum, and hold the same in trust for A. T. for life. The moiety of the estate proved insufficient to satisfy the legacy and annuity.

HELD—that the trustees must ascertain what sum invested in 2½ per cent. Consols at one year from the testator’s death would have been sufficient to produce an income of £78 per annum, and apportion the moiety of the estate in the proportion of that sum to £2,500.

IN RE McMAHON, WELLS *v.* TYRER, 55 Sol. Jo. [552—Warrington, J.]

(c) Charge on Real Estate.

[No paragraphs in this vol. of the Digest.]

(d) Exoneration of Mortgaged Property.

[No paragraphs in this vol. of the Digest.]

(e) Interest on Legacies.

50. *Contingent Legacies to Infants at Twenty-five and Thirty—Maintenance—Contingency Subsequent to Attaining Majority—Life Interest in Share of Residue—Another Fund Provided for Maintenance—Conveyancing and Law of Property Act, 1881* (44 & 45 Vict. c. 41), s. 43.—

XXIV. Payment of Debts and Legacies—Continued.

A testator having bequeathed to his son, who at the date of the testator's death was an infant, two sums of £15,000 when he attained the age of twenty-five and thirty years respectively, and given three-fourteenths of his converted residuary estate upon trusts which made the son tenant for life, the question arose whether the contingent legacies carried interest for any and what period.

HELD—that the legacies, being payable upon contingencies having no reference to the attainment of full age, did not carry interest.

IN RE ABRAHAM'S, ABRAHAM'S v. BENDON. [1911] 1 Ch. 108; 80 L. J. Ch. 83; 103 L. T. 532; 54 Sol. Jo. 874—Eve, J.

51. Demonstrative Legacy — Reversionary Fund—Time from which Interest Runs.]—There is no general principle to the effect that, where a legacy is made payable out of a particular fund which is reversionary, interest does not run until the reversion falls into possession.

IN RE WALFORD, KENYON v. WALFORD, [1911] [W. N. 212; 131 L. T. Jo. 58; 45 L. J. N. C. 704—C. A.

(f) Specific Legacies.

See EXECUTORS, No. 16.

XXV. SURVIVORSHIP.

[No paragraphs in this vol. of the Digest.]

XXVI. EXERCISE OF POWER OF APPOINTMENT.

See also CONFLICT OF LAWS, No. 8; POWERS.

52. Settlement Fund—Special Power—Absolute Interest in Default of Appointment —“Devise Bequeath and Appoint” —Trusts for Non-objects of Power—Power and Interest—Intention.]—By his “last will and testamentary appointment,” the testator, a solicitor, made the following disposition: “I devise all the remainder of my real estate and bequeath all my personal estate and by virtue of the provisions contained in the settlement executed upon my marriage I appoint the funds subject to the trusts thereof unto my trustees upon trust after payment of my just debts and funeral and testamentary expenses to divide the same equally between my five children”; and the testator directed the shares of two of his daughters to be held by his trustees upon the usual settlement trusts for the daughters for life, with remainder to their children at twenty-one or marriage.

At the time of making his will the testator had under the trusts of his marriage settlement a testamentary power of appointment in favour of the children of the marriage over the funds settled by both his wife and himself, and the trust of the latter fund in default of appointment was for the testator, his executors, administrators, and assigns absolutely. On a summons to determine the effect of the above-mentioned disposition with regard to the testator's own marriage settlement fund and his residuary real and personal estate:—

HELD—that the word “appoint” was not used in any narrow technical and restricted sense as merely exercising the special power of appointment, but that the words of disposition must be read together so as to effect the clear intention of the testator to deal with all the property in question as belonging to him absolutely.

Coe v. Chamberlain ((1799) 4 Ves. 631) applied.

IN RE GRIFFITHS'S SETTLEMENT, GRIFFITHS v. WAGHORNE, [1911] 1 Ch. 246; 80 L. J. Ch. 176; 104 L. T. 125—Joyce, J.

XXVII. ANNUITIES.

See INCOME TAX, No. 15.

XXVIII. CHARITABLE BEQUESTS.

See No. 40, *supra*; CHARITIES.

XXIX. CONDITIONAL WILL.

[No paragraph in this vol. of the Digest.]

XXX. MUTUAL WILLS.

See DEPENDENCIES, Nos. 9, 28.

XXXI. CONFLICT OF LAWS.

See CONFLICT OF LAWS (f).

XXXII. MISCELLANEOUS.

[No paragraph in this vol. of the Digest.]

WINDING-UP.

See BUILDING SOCIETIES; COMPANIES.

WITNESSES.

See EVIDENCE.

WORK AND LABOUR.

[No paragraphs in this vol. of the Digest.]

**WORKING CLASSES,
HOUSING OF.**

See PUBLIC HEALTH.

WORKSHOPS.

See FACTORIES AND WORKSHOPS.

WRECK.

See ADMIRALTY ; SHIPPING AND NAVIGATION.

WORDS.

- "Absent through illness."
See EDUCATION, No. 8.
- "Accident."
See MASTER AND SERVANT, I., 1 (a).
- "Actually transferred."
See BANKRUPTCY, No. 25.
- "Adjacent."
See WILLS, No. 19.
- "Adjoining or abutting."
See HIGHWAYS, No. 4.
- "All risks."
See INSURANCE, No. 18.
- "Alteration."
See COPYRIGHT, No. 5.
- "Ancillary to another business."
See FACTORIES, No. 2.
- "Annual value of premises."
See REVENUE, No. 10.
- "Appoint."
See WILLS, No. 52.
- "Arrangement or compromise."
See COMPANIES, No. 5.
- "Assets."
See COMPANIES, No. 12.
- "Beer."
See REVENUE, No. 11.
- "Benefit by contract or otherwise."
See DEATH DUTIES, No. 4.
- "Betting house."
See GAMING, No. 9.
- "Building."
See GAS, No. 2.
- "Calculated to deceive."
See TRADE MARKS, No. 1.
- "Carriage."
See REVENUE, Nos. 1, 2, 3.
- "Carvino."
See TRADE MARKS, No. 5.
- "Cash."
See COMPANIES, No. 14.

- "Children."
See POOR LAW, No. 8.
- "Choses in action."
See SETTLEMENTS, No. 7.
- "Cleaning of machinery."
See FACTORIES, No. 3.
- "Clear days."
See COMPANIES, No. 33.
- "Colony or dependency."
See TRUSTS, No. 12.
- "Competent person."
See MINES, No. 1.
- "Condonation."
See MASTER AND SERVANT, No. 131.
- "Contract of service."
See MASTER AND SERVANT, No. 116.
- "Conviction on indictment."
See CRIMINAL LAW, No. 89.
- "Costs of execution."
See BANKRUPTCY, No. 16.
- "Court, passage or otherwise."
See HIGHWAYS, No. 14.
- "Criminal cause or matter."
See EXTRADITION, No. 2 ; PRACTICE, No. 30.
- "Dead freight."
See SHIPPING, No. 29.
- "Defective wall."
See METROPOLIS, No. 7.
- "Delivery as required."
See SALE OF GOODS, No. 1.
- "Demised premises."
See LANDLORD AND TENANT, No. 14.
- "Detention by cranes."
See SHIPPING, No. 27.
- "Dispute arising at loading ports."
See SHIPPING, No. 21.
- "Documents."
See LOCAL GOVERNMENT, No. 18.
- "Domestic purposes."
See METROPOLIS, No. 17.
- "During 1910."
See SHIPPING, No. 11.
- "Ecclesiastical purposes."
See ECCLESIASTICAL LAW, No. 2.
- "Eldest son."
See SETTLEMENTS, No. 10.

Words—*Continued.*

- "Enclosed place."
See GAMING, No. 11.
- "Entering or being upon land."
See GAME, No. 2.
- "Exclusive right."
See DEPENDENCIES, No. 30.
- "Final conclusion of the cause or matter."
See HUSBAND AND WIFE, No. 10.
- "Fishmonger."
See LANDLORD AND TENANT, No. 9.
- "Fixtures."
See SETTLEMENTS, No. 19.
- "Forfeiture."
See SETTLEMENTS, No. 13.
- "Found upon premises."
See CRIMINAL LAW, No. 77.
- "Game."
See GAME, No. 1.
- "Genuine milk."
See FOOD, No. 3.
- "Get-up."
See TRADE MARKS, No. 7.
- "Habitual criminal."
See CRIMINAL LAW, I. (g).
- "Harsh and unconscionable."
See MONEY, Nos. 8, 9, 10.
- "Heir male or heir male apparent."
See SETTLEMENTS, No. 10.
- "Highways in the neighbourhood."
See HIGHWAYS, No. 8.
- "Improvement."
See SETTLEMENTS, No. 1.
- "Issue."
See WILLS, No. 11.
- "Land."
See CROWN PRACTICE, No. 2.
- "Lawful public meeting."
See HIGHWAYS, No. 10.
- "Laying out a new street."
See HIGHWAYS, No. 18.
- "Margarine."
See FOOD, No. 17.
- "Meeting."
See COMPANIES, No. 28.
- "Merchantable quality."
See SALE OF GOODS, No. 1.
- "Milk."
See FOOD, No. 3.
- "Minerals."
See MINES, Nos. 3, 4.
- "Money."
See WILLS, No. 27.
- "Near side of road."
See STREET TRAFFIC, No. 12.
- "Necessary expenses."
See SETTLEMENTS, No. 23.
- "Party."
See SOLICITORS, No. 11.
- "Place of abode."
See MAGISTRATES, No. 16.
- "Place of business."
See COMPANIES, No. 51.
- "Plate."
See REVENUE, No. 6.
- "Portion."
See POWERS, No. 2.
- "Prime cost item."
See BUILDING CONTRACTS, No. 3.
- "Private dwelling-house."
See WATERWORKS, No. 6.
- "Proceeding."
See SOLICITORS, No. 1.
- "Profits."
See COMPANIES, No. 56.
- "Projection."
See METROPOLIS, No. 4.
- "Property."
See COMPANIES, No. 12.
- "Provision merchant."
See TRADE, No. 4.
- "Public institution."
See FACTORIES, No. 1.
- "Public office."
See LOCAL GOVERNMENT, No. 13.
- "Public place."
See GAMING, No. 11.
- "Purchaser."
See EXECUTORS, No. 18.

Words—Continued.**"Receive, harbour, and maintain."***See CRIMINAL LAW, No. 48.***"Recently taken."***See ANIMALS, No. 6.***"Registered land."***See REAL PROPERTY, No. 2.***"Remuneration."***See MASTER AND SERVANT, No. 117.***"Residing in the United Kingdom."***See INCOME TAX, No. 3.***"Restaurant."***See LANDLORD AND TENANT, No. 9.***"Second offence."***See INTOXICATING LIQUORS, No. 1.***"Settled and apportioned."***See PUBLIC HEALTH, No. 2.***"Sewer."***See WATERS, No. 5.***"Share."***See EXECUTORS, No. 22.***"Ship."***See SHIPPING, No. 47.***"Shop."***See MARKETS, No. 1 ; SALE OF GOODS, No. 4.***"Specific wish."***See WILLS, No. 7.***"Standard."***See DEPENDENCIES, No. 17.***"Statute of Limitations."***See LIMITATION OF ACTIONS, No. 1.***"Still unsatisfied."***See COUNTY COURTS, No. 11.***"Stored or kept."***See INSURANCE, No. 2.***"Stream."***See WATERS, No. 5.***"Structure."***See METROPOLIS, No. 4.***"Subject thereto."***See SETTLEMENTS, No. 3 ; WILLS, No. 15.***"Superior court."***See EXTRADITION, No. 3.***"Supply of electricity."***See ELECTRIC LIGHTING, No. 1.***"Surf days."***See SHIPPING, No. 26.***"Surplus assets."***See COMPANIES, No. 57.***"Terms net cash."***See SHIPPING, No. 16.***"Tidal."***See WATERS, No. 3.***"Unexpired term."***See INTOXICATING LIQUORS, No. 3.***"Using net."***See FISHERIES, No. 4.***"Usual trade name."***See MONEY AND MONEY - LENDERS, No. 3.***"Western suburb."***See WILLS, No. 19.***"Wincarnis."***See TRADE MARKS, No. 5.***"Working day."***See SHIPPING, No. 26.***"Workman."***See MASTER AND SERVANT, I., 1 (r).***"Yearly interest."***See BANKRUPTCY, No. 9.*

ALPHABETICAL LIST OF CASES AFFIRMED, REVERSED OVERRULED, FOLLOWED, OR CONSIDERED, IN THE CASES DIGESTED IN THIS VOLUME.

(With Contemporaneous References.)

A.	COL.		COL.
Accles, Ltd., <i>In re</i> ([1902] W. N. 166) distinguished.		Archer's Case ([1892] 1 Ch. 322; 61 L. J. Ch. 129; 65 L. T. 800; 40 W. R. 212—C. A.) applied.	
<i>In re Piccadilly Hotel, Ltd.; Paul v. Piccadilly Hotel, Ltd.</i>	65	<i>In re London and South Western Canal, Ltd.</i>	71
Alexander's Trustees v. Alexander's Marriage Contract Trustees ([1916] S. C. 637; 47 Sc. L. R. 537) followed.		Arnold v. Dixon (1874) L. R. 19 Eq. 113; 23 W. R. 314) approved.	
<i>In re Hartland; Banks v. Hartland</i>	152	<i>Fawcett v. Beebe</i>	201, 214
Alison, <i>In re</i> ((1879) 11 Ch. D. 284) followed.		Ash (Claudius), Son & Co. v. Invicta Manufacturing Co., Ltd. (55 Sol. Jo. 348; 28 R. P. C. 252—decision of Warrington, J.) reversed	623
<i>In re Metropolis and Counties Permanent Investment Building Society, Gatfield's Case</i>	48	Atkinson, In re; Atkinson v. Atkinson (decision of Joyce, J.) reversed	653
Allan v. Liverpool Overseers ((1874) L. R. 9 Q. B. 180; 43 L. J. M. C. 69; 30 L. T. 93; 22 W. R. 330) distinguished.		Attorney-General v. Caledonian Ry. Co. (102 L. T. 358; 26 T. L. R. 313—decision of Bray, J.) affirmed	531
<i>Young & Co. v. Liverpool Assessment Committee</i>	518	Attorney-General v. Day ([1900] 1 Ch. 31; 69 L. J. Ch. 8; 64 J. P. 88; 81 L. T. 806—North, J.) applied.	
Amys v. Barton ([1912] 1 K. B. 40; [1911] W. N. 205; 81 L. J. K. B. 65; 105 L. T. 619; 28 T. L. R. 29—C. A.) cited.		<i>In re Hall's Charity</i>	256
<i>Wright v. Kerrigan</i>	389	Attorney-General v. Merthyr Tydfil Union ([1900] 1 Ch. 516; 69 L. J. Ch. 299; 82 L. T. 662; 64 J. P. 276; 48 W. R. 403; 16 T. L. R. 251—C. A.) applied.	
Anderson v. Balfour ([1910] 2 I. R. 497; 44 L. T. 168; 3 B. W. C. C. 588—C. A.) disagreed with.		<i>Attorney-General v. East Barnet Valley Urban District Council</i>	332
<i>Murray v. Denholm & Co.</i>	361	Attorney-General v. Shadwell ([1910] 1 Ch. 92; 79 L. J. Ch. 113; 101 L. T. 630; 54 Sol. Jo. 180; 26 T. L. R. 82) cited.	
Andrew v. Bridgman ([1908] 1 K. B. 596; 77 L. J. K. B. 272; 98 L. T. 656; 52 Sol. Jo. 148, C. A.) approved and applied.		<i>Attorney-General (Glamorgan County Council) v. Price</i>	53
<i>West v. Gwynne</i>	321	Attorney-General for British Columbia v. Attorney-General for Canada ((1889) 14 App. Cas. 295; 58 L. J. P. C. 88; 60 L. T. 712) discussed.	
Andrew & Co. v. Crossley Brothers ((1892) 9 R. P. C. 172) explained.		<i>Burrard Power Co. v. R.</i>	163
<i>Stepney Spare Motor Wheel Co., Ltd. v. Hall</i>	458, 459	Attorney-General for the Province of Quebec v. Attorney-General for the Province of Ontario (42 Can. S. C. R. 161—decision of Supreme Court of Canada) affirmed	168
Andrews v. Abertillery Urban District Council ([1911] W. N. 66; 104 L. T. 335; 55 Sol. Jo. 347—decision of Warrington, J.) reversed	200		
Annesley v. Woodhouse ([1898] 1 I. R. 69) followed.			
<i>In re Llewellyn; Llewellyn v. Llewellyn</i>	555		
Archer v. Kelly (1860) 1 Drew. & Sm. 300; 29 L. J. Ch. 911; 6 Jur. (N. S.) 814; 8 W. R. 684) followed.			
<i>In re Williams's Settlement; Williams v. Williams</i>	553		

LIST OF CASES AFFIRMED, REVERSED, ETC.

B.	COL.
Baker v. Ambrose ([1896] 2 Q. B. 372; 65 L. J. Q. B. 589) applied. <i>In re Bagley</i> 28	Bateman v. Poplar District Board of Works ((1886) 33 Ch. D. 360; 56 L. J. Ch. 149; 55 L. T. 374—C. A.) followed. <i>House Property and Investment Co. v. Grice</i> 413
Baker v. Ingall ([1911] 2 K. B. 132; 80 L. J. K. B. 699; 104 L. T. 456; 27 T. L. R. 321; 55 Sol. Jo. 409—decision of Div. Ct., reversed by C. A.), approved. <i>Wilkie v. King</i> 620	Bath v. Standard Land Co., Ltd. ([1910] 2 Ch. 408; 80 L. J. Ch. 36; 103 L. T. 498—decision of Neville, J.) affirmed and reversed . . . 68, 69
Baker v. Ingall, sub nom. Friendly Society of Ironfounders of England, Ireland and Wales v. Ingall ([1911] 2 K. B. 132; 80 L. J. K. B. 699; 104 L. T. 456; 27 T. L. R. 321; 55 Sol. Jo. 409—decision of Div. Ct.) reversed 620	Batt v. Metropolitan Water Board ([1911] 1 K. B. 845; 80 L. J. K. B. 521; 104 L. T. 385; 75 J. P. 174; 27 T. L. R. 258; 55 Sol. Jo. 330; 9 L. G. R. 307—decision of Div. Ct.) reversed 418, 441
Bald, In re ((1897) 66 L. J. Ch. 524; 76 L. T. 462; 45 W. R. 499) distinguished. <i>In re Pryce; Lawford v. Pryce</i> . . . 94, 95	Baxter's Trusts, In re; Mallings v. Addison (103 L. T. 427; 27 T. L. R. 28—decision of Parker, J.) affirmed . . 524
Barker v. Herbert (75 J. P. 355; 27 T. L. R. 252—decision of Lush, J.) affirmed 449 Barlow's Contract, In re ([1903] 1 Ch. 382; 72 L. J. Ch. 214; 88 L. T. 84; 51 W. R. 399) considered. <i>In re Bruen's Estate</i> 556	Bardsley v. Pilkington ((1588) Gouldsborough, 100) affirmed. <i>Coaker v. Willcocks</i> 14
Barnabas v. Berhsam Colliery Co. (102 L. T. 621; 3 B. W. C. C. 216—decision of C. A.) affirmed 358 Barnes v. Nunnery Colliery Co., Ltd. ([1910] W. N. 248; 4 B. W. C. C. 43—decision of C. A.) affirmed . . . 386	Berry v. Gaukroger ([1903] 2 Ch. 116; 72 L. J. Ch. 435; 88 L. T. 521; 51 W. R. 449; 19 T. L. R. 445—C. A.) followed. <i>In re Charlesworth; Tew v. Briggs</i> . . 154
Barrow's Case ((1880) 14 Ch. D. 432; 49 L. J. Ch. 498; 42 L. T. 891—C. A.) followed. <i>Wilkes v. Spooner</i> 316	Bettison, In re ((1874) L. R. 4. A. & E. 294) followed. <i>Corke v. Rainger; Corke v. Higgs</i> . . 187
Bates, Ex parte ((1879) 11 Ch. D. 914; 48 L. J. Bey. 113; 41 L. T. 263; 27 W. R. 927—C. A.) followed. <i>Victor v. Victor</i> 268, 269	Bigge, In re ([1907] 1 Ch. 714; 76 L. J. Ch. 413; 96 L. T. 903) reversed. <i>In re Watkins's Settlement; Wills v. Spence</i> 550
Bartlett, In re ((1880) 16 Ch. D. 561; 50 L. J. Ch. 205; 44 L. T. 17; 29 W. R. 279) distinguished. <i>In re Thomas; Bartley v. Thomas</i> . . 215, 491	Billericay Rural Council v. Poplar Union and Keeling ([1911] 1 K. B. 734; 104 L. T. 542; 75 J. P. 194—decision of Channell, J.) affirmed . . 255
Bartlett v. Franklin ((1867) 36 L. J. Ch. 671; 17 L. T. 100; 15 W. R. 1077) distinguished. <i>Edmondson v. Copland</i> 434	Billericay Rural Council v. Poplar Union and Keeling ([1911] 2 K. B. 801; 80 L. J. K. B. 1241; 105 L. T. 476; 75 J. P. 497; 55 Sol. Jo. 647; 9 L. G. R. 796—C. A.; decision of Channell, J.) affirmed. <i>Colchester Borough Council v. Gepp, King, Third party</i> 255
Bastable v. Little ([1907] 1 K. B. 59; 76 L. J. K. B. 77; 96 L. T. 115; 71 J. P. 52; 23 T. L. R. 38; 5 L. G. R. 279) distinguished. <i>Betts v. Sterens</i> 609	Birch v. Wade ((1814) 3 Ves. & B. 198; 13 R. R. 181) followed. <i>Reid v. Swan</i> 663
	Black v. Fife Coal Co. ([1909] S. C. 152; 46 Sc. L. R. 191—decision of Ct. of Sess.) reversed 400, 420
	Blackwell (R. W.) & Co., Ltd. v. Derby Corporation (decision of Bucknill, J.) reversed 17
	Bladon, In re Dando v. Porter ([1911] 2 Ch. 350; 105 L. T. 367—decision of Neville, J.) affirmed 304

LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.		COL.	
Blair v. Clark ([1908] 2 K. B. 548; 77 L. J. K. B. 647; 99 L. T. 172; 52 Sol. Jo. 498) followed.		British and Mexican Shipping Co., Ltd. v. Lockett Brothers & Co., Ltd. —decision of Hamilton, J.) reversed . . .	578
<i>Cor v. Bowen</i>	300	British Workman's and General Insurance Co. v. Cunliffe ((1902) 18 T. L. R. 425) discussed and reconciled.	
Blithmam, In re ((1866) L. R. 1 Eq. 23; 35 L. J. Ch. 255; 14 L. T. 6; 35 Beav. 219) discussed.		<i>Phillips v. Royal London Mutual Insurance Co., Ltd.</i>	291
<i>In re Anderson</i>	24	Brown v. Burt (27 T. L. R. 363—decision of Hamilton, J.) affirmed	278
Blythe v. Birtley ([1910] 1 Ch. 228; 79 L. J. Ch. 315; 101 L. T. 842; 26 T. L. R. 215; 17 Manson, 165—C. A.) distinguished.		Brown v. Turner, Brightman & Co. (decision of C. A.) affirmed	568
<i>McGlade v. Royal London Mutual Insurance Society, Ltd.</i>	236	Browne v. Stoughton ((1846) 14 Sim. 369) followed.	
Blythe v. Birtley ([1910] 1 Ch. 228; 79 L. J. Ch. 315; 101 L. T. 842; 26 T. L. R. 215; 17 Manson, 165—C. A.) followed.		<i>In re Stamford and Warrington (Earl); Payne v. Grey</i>	464
<i>Wilkinson v. City of Glasgow Friendly Society</i>	236	Burdett v. Horne (27 T. L. R. 402—decision of Lawrence, J.) affirmed	267
Board of Education v. Rice ([1910] 2 K. B. 165; 79 L. J. K. B. 692; 102 L. T. 578; 74 J. P. 259; 26 T. L. R. 422; 8 L. G. R. 549) affirmed	189	C.	
Board of Trade v. Employers' Liability Assurance Corporation, Ltd. ([1910] 1 K. B. 401; 79 L. J. K. B. 434; 101 L. T. 862; 54 Sol. Jo. 136; 26 T. L. R. 167; 17 Manson, 81—decision of Phillimore, J.) reversed	36	Caledonian Ry. Co. v. Glenboig Union Fire-clay Co. ([1910] S. C. 951; 47 Sc. L. R. 823—decision of Ct. of Sess.) affirmed	421
Boden, In re ([1907] 1 Ch. 132; 76 L. J. Ch. 101; 95 L. T. 741) followed.		Cardiff Corporation v. Hall ([1911] 1 K. B. 1009; 80 L. J. K. B. 644; 104 L. T. 467; 27 T. L. R. 339; 4 B. W. C. C. 159—C. A.) considered.	
<i>In re Boulcott's Settlement; Wood v. Boulcott</i>	551	<i>Carlin v. Alexander Stephen & Sons, Ltd.</i>	397
Born, In re ([1900] 2 Ch. 433; 69 L. J. Ch. 669; 83 L. T. 51; 49 W. R. 51) applied.		Carlisle and Cumberland Banking Co. v. Bragg (decision of Pickford, J.) affirmed	203
<i>In re Motor Cabs, Ltd.</i>	602	Carrick v. Errington ((1726) 2 P. Wms. 361) discussed and applied.	
Bouch v. Sproule ((1887) 12 App. Cas. 385; 56 L. J. Ch. 1037; 57 L. T. 345; 36 W. R. 193) distinguished.		<i>In re Scott; Scott v. Scott</i>	551
<i>In re Hume Nisbet's Settlement</i>	558	Carver v. Richards (1860) 1 De G. F. & J. 548; 27 Beav. 496; 29 L. J. Ch. 357; 2 L. T. 161; 6 Jur. (N. S.) 410; 8 W. R. 349) distinguished.	
Brennan v. Dillon ((1873) I. R. 7 Eq. 215; 8 Eq. 94) approved.		<i>Cloutte v. Storey</i>	477
<i>In re Gilbert</i>	209	Cathcart v. Chalmers ([1911] S. C. 292; 48 Sc. L. R. 207—decision of Ct. of Sess.) affirmed	9
Brice v. Lloyd ([1909] 2 K. B. 804; 101 L. T. 472; 25 T. L. R. 759; 53 Sol. Jo. 744—C. A.) followed.		Cattle v. Stockton Waterworks Co. ((1875) L. R. 10 Q. B. 453; 44 L. J. Q. B. 139; 33 L. T. 475) followed.	
<i>McKeown v. McMurray</i>	383	<i>La Société Anonyme de Remorquage à Hélice v. Bennetts</i>	150, 592
Bridgwater Navigation Co., In re ([1891] 2 Ch. 317; 60 L. J. Ch. 415; 64 L. T. 576—C. A.) followed.		Central London Railway v. City of London Land Tax Commissioners ([1911] 1 Ch. 467; 90 L. J. Ch. 348; 104 L. T. 245; 75 J. P. 292; 27 T. L. R. 296; 9 L. G. R. 580—decision of Eady, J., reversed on this point —Farwell, L.J., dissenting))	312
Briggs v. Mitchell ([1911] S. C. 705; 48 Sc. L. R. 606; 4 B. W. C. C. 400) approved.			
<i>Lee v. Owner of Ship "Bessie"</i>	370		

LIST OF CASES AFFIRMED REVERSED, ETC.

	COL.		COL.
Challis v. London and South-Western Ry. Co. ([1905] 2 K. B. 155; 74 L. J. K. B. 569; 93 L. T. 330; 53 W. R. 613; 21 T. L. R. 486, C. A.) applied.		Cocher v. McMullen ((1900) 81 L. T. 784) followed.	
<i>Nisbet v. Rayne and Burn</i>	357	<i>Stansfield & Co. v. Andrews</i>	308
Chamberlain's Wharf, Ld. v. Smith ([1900] 2 Ch. 605; 69 L. J. Ch. 783; 83 L. T. 238; 49 W. R. 91; 16 T. L. R. 514—C. A.) discussed.		Cohen v. Mitchell ((1890) 25 Q. B. D. 262; 59 L. J. Q. B. 409; 62 L. T. 206; 38 W. R. 551; 7 Morr. 207, C. A.) cited.	
<i>Osborne v. Amalgamated Society of Railway Servants</i>	621	<i>In re Behrend's Trust; Surman v. Biddell</i> 35	
Chaplin v. Hicks (27 T. L. R. 244—decision of Pickford, J.) affirmed	151	Cole v. Miles ((1888) 57 L. J. M. C. 132; 60 L. T. 145; 36 W. R. 784; 53 J. P. 228) followed.	
Charles v. Jones ((1887) 35 Ch. D. 544; 56 L. J. Ch. 745; 56 L. T. 818; 35 W. R. 645) followed.		<i>Arnold v. Morgan</i>	345
<i>Williams v. Jones</i>	436	Coleman & Coleman, Ld. v. Smith (Stephen) & Co., Ld.; In re "Carvino" Trade Mark ([1911] 2 Ch. 572; 81 L. J. Ch. 16; 27 T. L. R. 533; 55 Sol. Jo. 649; 28 R. P. C. 645—decision of Eady, J.) reversed in part	623
Chicago and North-West Granaries Co., In re ([1898] 1 Ch. 263; 67 L. J. Ch. 109; 77 L. T. 677) followed.		Colley's Patents, Ld. v. Metropolitan Water Board ([1911] 2 K. B. 38; 80 L. J. K. B. 929; 104 L. T. 478; 75 J. P. 217; 27 T. L. R. 286; 55 Sol. Jo. 311; 9 L. G. R. 483—decision of C. A.) affirmed	416
<i>In re Tewkesbury Gas Co.; Tysse v. The Co.</i>	64	Colman v. Seymour ((1748) 1 Ves. Sen. 210) followed.	
Clack v. Holland ((1854) 19 Beav. 262; 24 L. J. Ch. 13; 18 Jur. 1007; 2 W. R. 402) applied.		<i>In re Master's Settlement; Master v. Master</i>	477
<i>In re Greenwood; Greenwood v. Firth</i> . 634, 635		"Comet" (Owners of Lightship) v. Owners of the "W. H. No. 1"; The W. H. No. 1" and The "Knight Errant" ([1910] P. 199; 79 L. J. P. 61; 102 L. T. 643; 11 Asp. M. L. C. 407—decision of C. A.) affirmed	584
Clark v. Gas Light and Coke Co. ((1905) 7 B. W. C. C. 119) explained and distinguished.		Compania Sansinena De Carnes Congeladas v. Houlder Brothers & Co., Ld. (decision of Hamilton, J.) reversed 485	
<i>Cardiff Corporation v. Hall</i>	391	Connolly Brothers, Ld., In re; Wood v. Connolly Brothers, Ld. (104 L. T. 308; 55 Sol. Jo. 407—decision of Parker, J.) affirmed	112
Clark v. Sun Insurance Office (102 L. T. 336; 26 T. L. R. 341—decision of Bray, J.) reversed	282	Cooke v. Midland Great Western Railway of Ireland ([1909] A. C. 229; [1909] 2 I. R. 499; 78 L. J. P. C. 76; 100 L. T. 626; 25 T. L. R. 375) distinguished.	
Clayton's Case ((1816) 1 Mer. 585) cited.		<i>Barker v. Herbert</i>	449
<i>In re O'Shea; Ex parte Lancaster</i> 32, 33		Coomber, In re; Coomber v. Coomber ([1911] 1 Ch. 174; 80 L. J. Ch. 57; 103 L. T. 720—decision of Neville, J.) affirmed, but on wider grounds	245
Clemens (E.) Horst Co. v. Biddell Brothers ([1911] 1 K. B. 934; 80 L. J. K. B. 584; 104 L. T. 577; 27 T. L. R. 331; 55 Sol. Jo. 383; 16 Com. Cas. 197—decision of C. A.) reversed	538, 572	Cooper's Trusts, In re ([1873] W. N. 87) followed.	
Clements, In re ([1901] 1 K. B. 260; 70 L. J. Q. B. 58; 83 L. T. 464; 49 W. R. 176; 8 Mans. 27—dictum of Wright, J.) dissented from.		<i>In re Pope's Contract</i>	550
<i>In re Bagley</i>	36	Cope v. Sharpe ([1911] 2 K. B. 837; 80 L. J. K. B. 1008; 104 L. T. 718; 27 T. L. R. 396—decision of Div. Ct.)	238
Clemow, In re; Yeo v. Clemow ([1900] 2 Ch. 182; 69 L. J. Q. B. 522; 82 L. T. 550; 48 W. R. 541) explained.		Cope v. Sharpe ([1911] 2 K. B. 837; 80 L. J. K. B. 1008; 104 L. T. 718; 27 T. L. R. 396—decision of Div. Ct.) reversed	629
<i>Porte v. Williams</i>	152		
Cloutte v. Storey ([1910] W. N. 163; 79 L. J. Ch. 640; 103 L. T. 131—decision of Neville, J.) affirmed	202, 477, 637		
Coaker v. Willcocks ([1911] 1 K. B. 649; 103 L. T. 806; 27 T. L. R. 137; 55 Sol. Jo. 155—decision of Div. Ct.) affirmed	14, 57		

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Corke v. Rainger : Corke v. Higgs (75 J. P. 543—decision of Chancellor of Diocese of Gloucester) reversed . . .	187	Debtor, In re A (No. 305 of 1911) ([1911] 2 K. B. 718; 105 L. T. 125) distinguished.	
Cotterell v. Stratton (1872) L. R. 8 Ch. 295; 42 L. J. Ch. 417) followed.		<i>In re A Debtor</i> (No. 1838 of 1911) . . .	26
<i>Rourke v. Robinson</i>	435	Deddington Steamship Co. v. Inland Revenue Commissioners ([1911] 1 K. B. 1078; 80 L. J. K. B. 761; 104 L. T. 602) affirmed	533
Cox v. Chamberlain (1799) 4 Ves. 631; 4 R. R. 311) applied.		Dee Estates, Ltd., In re; Wright v. Dee Estates, Ltd. (104 L. T. 249; 55 Sol. Jo. 349—decision of Eady, J.) affirmed	602
<i>In re Griffith's Settlement; Griffiths v. Waghorne</i>	670	De Jager v. De Jager ((1886) 11 App. Cas. 411) followed.	
"Craegellachie," The ([1909] P. 1; 77 L. J. P. 145; 99 L. T. 252; 11 Asp. M. L. C. 103) disapproved.		<i>De Jager v. Foster</i>	162
<i>The "Grovehurst"</i>	584	Denaby and Cadeby Main Collieries, Ltd. v. Anson (102 L. T. 76; 26 T. L. R. 310; 11 Asp. M. L. C. 318—decision of Lawrence, J.) affirmed	594
Crawford v. Allan Steamship Co. ([1911] S. C. 791; 41 Sc. L. R. 648—decision of Ct. of Sess.) reversed	575	Devonport Corporation v. Tozer ([1903] 2 Ch. 759; 72 L. J. Ch. 411; 88 L. T. 113; 67 J. P. 269; 52 W. R. 6; 19 T. L. R. 257; 1 L. G. R. 421—C. A.) followed.	
Crystal Palace Company, In re; Fox v. The Company ([1911] W. N. 74; 104 L. T. 251; 27 T. L. R. 305; 55 Sol. Jo. 348—decision of Eady, J.) affirmed	81	<i>Attorney-General v. Dorin</i>	259
"Curran," The (decision of Deane, J.) affirmed.	589	"Devonshire," The (27 T. L. R. 490—decision of Evans, Pres.) affirmed.	
D.		<i>"Seacombe," The, The "Decanshire"</i>	586
Davidson, In re; Minty v. Bourne ([1909] 1 Ch. 567; 78 L. J. Ch. 437; 99 L. T. 222; 24 T. L. R. 760; 52 Sol. Jo. 621—C. A.) distinguished.		Dodson v. Sammell ((1861) 1 Dr. & Sm. 575; 30 L. J. Ch. 799; 9 W. R. 887) applied.	
<i>In re Salter; Reu v. Crozier</i>	54	<i>In re Lawley; Jackson v. Leighton</i>	213
Davidson's Settlement Trusts, In re ((1873) L. R. 15 Eq. 383; 42 L. J. Ch. 347; 21 W. R. 452) followed.		Doering v. Doering ((1889) 42 Ch. D. 203; 58 L. J. Ch. 553; 37 W. R. 796) distinguished.	
<i>In re Anderson</i>	24	<i>In re Towndrow; Gratton v. Machen</i>	634
Davies's Trusts, In re ((1871) L. R. 13 Eq. 163; 41 L. J. Ch. 97; 25 L. T. 785; 20 W. R. 165) followed.		Dolphin v. Robins ((1859) 7 H. L. Cas. 390; 29 L. J. P. 11; 5 Jur. (N.S.) 1271; 7 W. R. 674; 3 Macq. 563) cited.	
<i>In re Seabrook; Gray v. Baddeley</i>	474	<i>In re Mackenzie; Mackenzie's, Edwards</i>	93
Dawson v. Bingley Urban District Council (75 J. P. 17; 27 T. L. R. 46; 8 L. G. R. 1118—decision of Grant-ham, J.) reversed	412	Dominion of Canada v. Province of Ontario (42 Can. S. C. R. 1—decision of Supreme Court of Canada) affirmed	168
Dean v. Allen ((1855) 20 Beav. 1) applied.		Donevan v. Laing, Wharton and Down Construction Syndicate ([1893] 1 Q. B. 629; 63 L. J. Q. B. 25; 68 L. F. 512; 57 J. P. 583; 41 W. R. 155; 4 B. 317—C. A.) considered.	
<i>In re Lawley; Jackson v. Leighton</i>	213	<i>McCartan v. Belfast Harbour Commissioners</i>	161
De Beers Consolidated Mines, Ltd. v. British South Africa Co. ([1910] 2 Ch. 502; 80 L. J. Ch. 65; 103 L. T. 4; 26 T. L. R. 591; 54 Sol. Jo. 679—decision of C. A.) reversed	63, 436	"Draupner," S.S. (Owners) v. Owners of Cargo of S.S. "Draupner"; The "Draupner" ([1909] P. 219; 78 L. J. P. 90; 25 T. L. R. 138—decision of C. A.) reversed	571
Debentures Corporation, Ltd. v. Uttoxeter Brewery, Ltd. (noted in Palmer's Company Precedents, 10th ed., pt. iii., p. 731) followed on latter point.		Dyson v. Attorney-General ([1911] 1 K. B. 410; 80 L. J. K. B. 531; 103 L. T. 707; 27 T. L. R. 413; 55 Sol. Jo. 168—C. A.) followed.	
<i>In re Piccadilly Hotel, Ltd.; Paul v. Piccadilly Hotel, Ltd.</i>	65	<i>Burghes v. Attorney-General</i>	413, 481

LIST OF CASES AFFIRMED, REVERSED, ETC.

E.	COL.	F.	COL.
Eaton v. Buchanan ([1909] 8. C. 47— decision of Ct. of Sess.) reversed . . .	547	Farmer v. Scottish North American Trust, Ld. ([1910] S. C. 966; 47 S. C. L. R. 832—decision of Ct. of Sess.) affirmed	281
Ebbetts v. Conquest ([1895] 2 Ch. 377) followed.		Fear v. Vickers (27 T. L. R. 483; 55 Sol. Jo. 601—decision of Div. Ct.) reversed	644
<i>Clare v. Dobson</i>	318	Fisher v. Great Western Ry. Co. ([1910] 2 K. B. 252; 79 L. J. K. B. 870; 102 L. T. 575; 26 T. L. R. 435—decision of Phillimore, J.) affirmed	91
Eccles & Co. v. Louisville and Nashville Railroad Co. (28 T. L. R. 36; 56 Sol. Jo. 74—decision of Div. Ct.) reversed	204	Fleming v. London County Council; Metro- politan Ry. Co. v. London County Council ([1909] 2 K. B. 317; 78 L. J. K. B. 830; 101 L. T. 323; 73 J. P. 339; 53 Sol. Jo. 558; 7 L. G. R. 720—decision of C. A.) affirmed	408
<i>In re London and Western Canal Co., Ld.</i>	71	Fletcher v. Owners of Ship "Duchess," <i>sub nom.</i> Hewitt v. Owners of SS. "Duchess" ([1910] 1 K. B. 772; 79 L. J. K. B. 867; 102 L. T. 204; 26 T. L. R. 300; 54 Sol. Jo. 325; 3 B. W. C. C. 239—decision of C. A.) affirmed	376
Edge (W.) & Sons, Ld. v. Niccolls (W.) & Sons, Ld. ([1911] 1 Ch. 5; 80 L. J. Ch. 154; 103 L. T. 579; 27 T. L. R. 101; 28 R. P. C. 53—decision of C. A.) reversed	624	Flight v. Booth (1834) 1 Bing. N. C. 370; 4 L. J. C. P. 66; 1 Scott, 190) distinguished.	
Edinburgh and District Aerated Water Manufacturers' Defence Association v. Jenkinson (5 Fraser, 1159) dis- tinguished.		<i>Shepherd v. Croft</i>	543
<i>British Association of Glass-Bottle Manufacturers, Ld.</i> v. Nettlefold	618	Foster v. Mackinnon ((1869) L. R. 4 C. P. 704; 38 L. J. C. P. 310; 20 L. T. 887; 17 W. R. 1105) discussed.	
Edwards v. Midland Ry. Co. ((1880) 6 Q. B. D. 287; 50 L. J. Q. B. 281; 43 L. T. 694; 45 J. P. 374; 29 W. R. 609) approved.		<i>Carlisle and Cumberland Banking Co. v. Bragg</i>	203
<i>Lambert v. Great Eastern Ry. Co.</i>	510	Frames v. Bultfontein Mining Co. ([1891] 1 Ch. 140; 60 L. J. Ch. 99; 64 L. T. 12; 39 W. R. 134; 2 Meg. 374) distinguished.	
Ellis v. Banyard (104 L. T. 460; 27 T. L. R. 417; 55 Sol. Jo. 500—decision of Div. Ct.) reversed	444	<i>In re Spanish Prospecting Co., Ld.</i>	87
Ellis v. Kerr ([1910] 1 Ch. 529; 79 L. J. Ch. 291; 102 L. T. 417; 54 Sol. Jo. 307) followed.		Frankenburg v. Great Horseless Carriage Co. ([1900] 1 Q. B. 504; 69 L. J. Q. B. 147; 81 L. T. 684; 7 Mans. 347) followed.	
<i>Napier v. Williams</i>	99	<i>Compania Sansinena de Carnes Conge- ladas v. Houlder</i>	485
Emden v. Carte ((1881) 19 Ch. D. 311; 51 L. J. Ch. 371; 45 L. T. 328; 30 W. R. 17—C. A.) applied.		Fraser v. Murdoch (1881) 6 App. Cas. 855; 45 L. T. 417; 30 W. R. 162) applied.	
<i>In re Motor Cabs, Ld.</i>	602	<i>Matthews v. Ruggles-Brise</i>	631, 632
Errington v. Carrick (1728) 5 Bro. P. C. 391) discussed and applied.		Freeman v. Pope (1870) 5 Ch. App. 538; 21 L. T. 816; 18 W. R. 906—C. A.) followed.	
<i>In re Scott; Scott v. Scott</i>	551	<i>Carruthers v. Peake</i>	560
Evans v. Levy ([1910] 1 Ch. 452; 79 L. J. Ch. 383; 102 L. T. 128) overruled as to costs.		Freeman (G.) & Sons v. Chester Rural District Council (decision of Lush, J.) affirmed	17
<i>West v. Gwynne</i>	321	Freston, <i>In re</i> ((1883) 11 Q. B. D. 545; 52 L. J. Q. B. 545; 49 L. T. 290; 31 W. R. 804—C. A.) considered.	
Evans (R.) & Co. v. Astley ([1911] 1 K. B. 1036; 80 L. J. K. B. 731; 104 L. T. 373; 4 B. W. C. C. 209—decision of C. A.) affirmed	377	<i>Seldon v. Wilde</i>	596
Eyre v. New Forest Highway Board ((1892) 56 J. P. 517—C. A.) applied.			
<i>Paris v. Lynton Rural District Council</i>	252		

LIST OF CASES AFFIRMED, REVERSED, ETC

COL.	COL.
Fulham Parish v. Woolwich Union ([1907] A. C. 255; 76 L. J. K. B. 739; 97 L. T. 117; 71 J. P. 361; 23 T. L. R. 483; 5 L. G. R. 801) followed.	Gillow v. Durham County Council ([1911] 1 K. B. 222; 80 L. J. K. B. 380; 104 L. T. 36; 75 J. P. 33; 27 T. L. R. 64; 8 L. G. R. 1059—decision of Hamilton, J.) reversed (Vaughan Williams, L.J. dissenting) . . . 189
<i>Kington-upon-Hull Incorporation for the Poor v. Hackney Union</i> . . . 472	Glamorgan County Asylum (Committee of Visitors) v. Cardiff Guardians ([1910] 2 K. B. 547; 79 L. J. K. B. 1146; 103 L. T. 189; 74 J. P. 402; 8 L. G. R. 860—decision of Div. Ct.) affirmed. . . 469
Furniss v. Gartside & Co., Ltd. ((1910) 3 B. W. C. C. 411) followed.	Glasgow Corporation v. Lorimer (or Riddell) ([1910] S. C. 693; 47 Sc. L. R. 630—decision of Ct. of Sess.) reversed . . . 325, 401
<i>Cole v. Evans, Son, Leschner and Webb, Ltd.</i> . . . 386	Glossop v. Heston and Isleworth Local Board ((1879) 12 Ch. D. 102; 49 L. J. Ch. 89; 40 L. T. 736; 28 W. R. 111—C. A.) considered.
Furnivall v. Coombes ((1843) 5 Man. & G. 736; 6 Scott, N. R. 522; 12 L. J. C. P. 265; 17 W. R. 442) followed.	<i>Jones v. Llanrust Urban District Council</i> . . . 612
<i>Watling v. Lewis</i> . . . 156	Goddard v. O'Brien ((1882) 9 Q. B. D. 37; 46 L. T. 306; 30 W. R. 549) questioned.
G.	<i>Hirachand Panamchand v. Temple, sub nom. Panamchand Shreechandra & Co. v. Temple</i> . . . 97
Gadd, In re ((1883) 23 Ch. D. 134; 52 L. J. Ch. 396; 48 L. T. 395; 31 W. R. 417) followed.	Goff v. Great Northern Ry. Co. ((1861) 3 E. & E. 672; 30 L. J. Q. B. 148; 7 Jur. (N. S.) 286; 3 L. T. 850) approved.
<i>In re Sales; Sales v. Sales</i> . . . 632	<i>Lambert v. Great Eastern Ry. Co.</i> . . . 510
Garwood v. Garwood (104 L. T. 341—decision of Eve, J.) affirmed . . . 452	Gramophone and Typewriter, Ltd. v. Stanley ([1908] 2 K. B. 89; 77 L. J. K. B. 834; 99 L. T. 39; 24 T. L. R. 480; 15 Mans. 251—C. A.) applied.
Geen v. Newington Vestry ([1898] 2 Q. B. 1; 67 L. J. Q. B. 557; 62 J. P. 565; 46 W. R. 624) followed.	<i>Thomas Logan, Ltd. v. Davis</i> . . . 72
<i>House Property and Investment Co. v. Grice</i> . . . 413	Gramophone Co., Ltd. v. Magazine Holder Co. (102 L. T. 409; 27 R. P. C. 152—decision of C. A.) affirmed . . . 456
General Accident Fire and Life Assurance Corporation, Ltd. v. McGowan ([1908] A. C. 207; [1908] S. C. (H. L.) 24; 45 Sc. L. R. 681; 77 L. J. P. C. 38; 98 L. T. 734; 24 T. L. R. 533; 52 Sol. Jo. 455) considered and applied.	Grand Junction Canal Co. v. Petty ((1888) 21 Q. B. D. 273; 57 L. J. Q. B. 572; 59 L. T. 767; 52 J. P. 692; 36 W. R. 795) followed.
<i>Clark v. Sun Insurance Office</i> . . . 282	<i>Arnold v. Morgan</i> . . . 345
General Billposting Co. v. Atkinson ([1909] A. C. 118; 71 L. J. Ch. 77; 99 L. T. 943; 25 T. L. R. 178) applied.	Grand Junction Waterworks Co. v. Hampton Urban Council ([1898] 2 Ch. 331; 67 L. J. Ch. 603; 78 L. T. 673; 14 T. L. R. 167; 16 W. R. 644) distinguished.
<i>Measures Brothers, Ltd. v. Measures</i> . . . 70	<i>Burghes v. Attorney-General</i> . . . 445
Gibbon v. Paddington Vestry ([1900] 2 Ch. 794; 69 L. J. Ch. 746; 83 L. T. 136; 64 J. P. 727; 49 W. R. 8; 16 T. L. R. 538) applied.	Gray v. Carr ((1871) L. R. 6 Q. B. 522; 40 L. J. Q. B. 257; 25 L. T. 215; 19 W. R. 1173) not followed.
<i>Green v. Hackney Corporation</i> . . . 415	<i>Kish v. Taylor</i> . . . 573, 589
Gibson v. Barton ((1875) L. R. 10 Q. B. 329; 44 L. J. M. C. 81; 32 L. T. 396; 23 W. R. 858) followed.	Great Central Railway v. Banbury Union ([1909] A. C. 78; 78 L. J. K. B. 225; 100 L. T. 89; 73 J. P. 59; 53 Sol. Jo. 177; 25 T. L. R. 143; 7 L. G. R. 227) cited.
<i>Park v. Lawton</i> . . . 74	<i>East London Railway Joint Committee v. Greenwich Union Local Board Committee</i> . . . 316
Gibson v. Dunkerley Brothers, Lees and Sykes Third Parties (102 L. T. 587; 3 B. W. C. C. 345—decision of C. A.) affirmed.	
<i>Lees v. Dunkerley Brothers</i> . . . 372	
Gibson v. Fisher ((1867) L. R. 5 Eq. 51; 37 L. J. Ch. 67; 16 W. R. 115) not followed.	
<i>In re Dering; Neale v. Beale</i> . . . 655	
Gifford v. Yarborough (5 Bing. 163) cited.	
<i>Attorney-General for Ireland v. McCarthy</i> . . . 645	

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Great Central Ry. Co. v. Midland Ry. Co. ([1911] 2 Ch. 173; 80 L. J. Ch. 602; 104 L. T. 844—decision of Neville, J.) reversed	507	Harris v. Chesterfield (Earl) ([1911] A. C. 623; 80 L. J. Ch. 626; 105 L. T. 453; 27 T. L. R. 548; 55 Sol. Jo. 686) applied.	
Grey v. Grey (1677) from Lord Nottingham's MSS. 2 Swanst. 594) followed.		<i>Staffordshire and Worcestershire Canal Navigation v. Bradley</i>	223
<i>Commissioner of Stamp Duties v. Byrnes</i> 160		Harris v. Harris ((1861) 29 Beav. 110) explained.	
Griffiths v. Eccles Provident Industrial Co- operative Society, Ltd. (decision of Avery, J.) affirmed	284	<i>In re Robinson; Maclaren v. Public Trustee</i>	329
" Grovehurst, " The (decision of Deane, J.) affirmed	584	Harrison, Ainslie & Co. v. Barrow-in-Furness ((1891) 63 L. T. 834; 39 W. R. 250) not followed.	
" Grovehurst, " The ([1910] P. 316; 79 L. J. P. 121; 103 L. T. 239, C. A.) cited.		<i>Willmott v. London Road Car Co., Ltd.</i> 320	
" <i>Raguhild,</i> " <i>The</i>	582	Harse v. Pearl Life Insurance Co. ([1904] 1 K. B. 558; 73 L. J. K. B. 373; 90 L. T. 245; 52 W. R. 457; 20 T. L. R. 264) discussed and recon- ciled.	
Gutteridge v. Munyard (1834) 7 C. & P. 129; 1 M. & Rob. 334) explained and distinguished.		<i>Phillips v. Royal London Mutual Insurance Co., Ltd.</i>	291
<i>Lurcott v. Wakely and Wheeler</i>	318	Hartlepool Electric Tramways Co., Ltd. v. Hartlepool Corporation (75 J. P. 507; 9 L. G. R. 1098—decision of Bray, J.) affirmed	629
Guy v. Churchill (1881) 35 Ch. D. 489; 56 L. J. Ch. 670; 57 L. T. 510; 35 W. R. 706—C. A.) applied.		Haynes v. Ford ([1911] 1 Ch. 375; 80 L. J. Ch. 229; 104 L. T. 16; 27 T. L. R. 183—decision of Neville, J.) affirmed	354
<i>In re Motor Cabs, Ltd.</i>	602	Hayward, In re ([1897] 1 Ch. 905; 66 L. J. Ch. 392; 76 L. T. 383; 45 W. R. 439; 4 Mans. 130) discussed.	
H.		<i>In re Anderson</i>	24
Hadley, In re ([1909] 1 Ch. 20; 78 L. J. Ch. 254; 100 L. T. 54; 25 T. L. R. 44; 53 Sol. Jo. 46—C. A.) followed.		High v. Billings ((1903) 67 J. P. 388) followed.	
<i>In re Pryce; Lawford v. Pryce</i>	94, 95	<i>House Property and Investment Co. v. Grice</i>	413
Hamilton v. Mackie ((1889) 5 T. L. R. 677) approved.		" Highland Loch, " The (27 T. L. R. 481— decision of Evans, Pres.) reversed	589
<i>Thomas (T. W.) & Co., Ltd. v. Portsea Steamship Co., Ltd.</i>	571	Hill, In re ((1886) 33 Ch. D. 266; 55 L. T. 104—C. A.) applied.	
Hanau v. Ehrlich ([1911] 2 K. B. 1056; 105 L. T. 320—decision of C. A.) affirmed	101	<i>In re Motor Cabs, Ltd.</i>	602
" Hankow, " The ((1879) 4 P. D. 197; 48 L. J. Adm. 29; 40 L. T. 335; 4 Asp. M. L. C. 97) approved and followed.		Hillyer v. St. Bartholomew's Hospital (Governors) ([1909] 2 K. B. 820; 78 L. J. K. B. 958; 101 L. T. 368; 25 T. L. R. 762; 53 Sol. Jo. 714) approved.	
<i>The "Umsinga"</i>	593	<i>Foot v. Shaw Stewart</i>	447
Hardoon v. Belilios ([1901] A. C. 118; 70 L. J. P. C. 9; 83 L. T. 573; 49 W. R. 209; 17 T. L. R. 126) applied.		Hirachand Punamchand v. Temple (27 T. L. R. 178; 55 Sol. Jo. 238— decision of Scrutton, J.) reversed	97
<i>Matthews v. Ruggles-Brise</i>	632	Hobbs v. Turner ((1902) 18 T. L. R. 235) followed.	
Hardy's Crown Brewery, Ltd. and St. Philip's Tavern, Manchester, In re (103 L. T. 308; 74 J. P. 395; 26 T. L. R. 605—decision of Bray, J.) affirmed 304		<i>Crittall Manufacturing Co. v. London County Council and March</i>	45
Harris v. Chesterfield (Earl) ([1908] 1 Ch. 230; 77 L. J. Ch. 111; 98 L. T. 236; 24 T. L. R. 105—decision of C. A.) affirmed	223		

LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.

- Hodge v. Attorney-General** ((1839) 3 Y & C. Ex. 342; 8 L. J. Ex. Eq. 28) approved and followed.
- Dyson v. Attorney-General* . . . 144, 484
- Holford, In re** ([1894] 3 Ch. 30; 63 L. J. Ch. 637; 70 L. T. 777; 42 W. R. 563; 7 R. 304), followed.
- In re Williams's Settlement; Williams v. Williams* . . . 553
- Hope (John D.) & Co. v. Glendinning** ([1911] S. C. 209; 48 Sc. L. R. 775—decision of Ct. of Sess.) reversed . 608
- Howe v. Smith** ((1884) 27 Ch. D. 89; 53 L. J. Ch. 1055; 50 L. T. 573; 48 J. P. 773; 32 W. R. 802) considered.
- Hall v. Burnell* . . . 542
- Hoyles, In re; Row v. Jagg** ([1910] 2 Ch. 333; 79 L. J. Ch. 720; 103 L. T. 127; 26 T. L. R. 516; 54 Sol. Jo. 582—decision of Eady J.) affirmed . 55, 92
- Huckle v. London County Council** (26 T. L. R. 580; 3 B. W. C. C. 536—decision of Div. Ct.) affirmed . . . 363
- Hudson v. Carmichael** ((1854) Kay, 613; 23 L. J. Ch. 893; 18 Jur. 851) followed.
- Hall v. Hall* . . . 264
- Hutchins Brothers v. Royal Exchange Assurance** (104 L. T. 208; 27 T. L. R. 217; 16 Com. Cas. 132—decision of Scrutton, J.) affirmed . . . 296
- Hyams v. Stuart King** ([1908] 2 K. B. 696; 77 L. J. K. B. 794; 99 L. T. 424; 24 T. L. R. 675; 52 Sol. Jo. 551—C. A.) distinguished.
- Genforsikrings Aktieselskabet (Scandinavia Reinsurance Co. of Copenhagen) v. Da Costa* . . . 531, 532
- Hyde Park Place Charity, In re** (decision of Warrington, J.) affirmed . . 52
- Hyett v. Mekin** ((1884) 25 Ch. D. 735; 53 L. J. Ch. 241; 50 L. T. 54; 32 W. R. 513) approved.
- Fawcett v. Berbe* . . . 201, 214

I.

- Inman v. Kirkdale Overseers** ((1874) L. R. 9 Q. B. 180) distinguished.
- Young & Co. v. Liverpool Assessment Committee* . . . 518
- International Sponge Importers, Ltd. v. Andrew Watt & Sons** ([1909] 2 Scots. L. T. 24—decision of the Ct. of Sess.) affirmed . . . 6

J.

- Jackson v. De Kadiach** ([1904] W. N. 168) considered.
- Hall v. Burnell* . . . 542
- Jackson v. Rotax Motor and Cycle Co.** (Decision of Div. Ct.) reversed . 536
- Jenkins v. Price** ([1907] 2 Ch. 229; 76 L. J. Ch. 507; 23 T. L. R. 608) overruled as to costs.
- West v. Gwynne* . . . 324
- Jervis v. Wolferstan** ((1874) L. R. 18 Eq. 18; 43 L. J. (Ch.) 809; 30 L. T. 452) applied.
- Matthews v. Ruggles-Brise* . . . 631, 632
- Johnston v. O'Neill** ([1909] 1 I. R. 237—decision of C. A., Ireland) affirmed . 223
- Jones v. Pacaya Rubber and Produce Co., Ltd.** (decision of Lush, J.) reversed . 83
- Jones v. Turnbull** ((1837) 2 M. & W. 601; 5 Dowl. 591; Murph. & H. 106; 6 L. J. Ex. 166; 1 Jur. 638) applied.
- In re Motor Cars, Ltd.* . . . 602

K.

- Kavanagh v. Workingman's Benefit Building Society** ([1896] 1 I. R. 56) discussed and disapproved.
- Bath v. Standard Land Co., Ltd.* . . 69
- Kay v. Kay** ([1904] P. 382; 73 L. J. P. 108; 91 L. T. 360; 20 T. L. R. 521) approved.
- Stevenson v. Stevenson* . . . 271
- Kearney v. Kearney** (decision of Barton, J.) affirmed . . . 651
- Keates v. Lewis Merthyr Consolidated Collieries, Ltd.** ([1910] 2 K. B. 445; 79 L. J. K. B. 722; 102 L. T. 898; 74 J. P. 292; 26 T. L. R. 477; 54 Sol. Jo. 522—decision of C. A.) affirmed . . . 403
- Keeling v. New Monckton Collieries, Ltd.** ([1911] A. C. 618; 80 L. J. K. B. 1205; 105 L. T. 337; 27 T. L. R. 551; 55 Sol. Jo. 687; 4 B. W. C. C. 332) not followed.
- Briggs v. Mitchell* . . . 371
- Kemp-Welch v. Kemp-Welch** (1910 P. 233; 79 L. J. P. 92; 102 L. T. 587; 26 T. L. R. 477—C. A.) applied.
- Sanders v. Sanders* . . . 270
- Kent v. Fittall (No. 4)** (103 L. T. 668; 75 J. P. 113; 27 T. L. R. 79; 9 L. G. R. 27—decision of Div. Ct.) affirmed on different grounds . 495

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Kent v. Fittall (No. 4) ([1911] 2 K. B. 1102; 81 L. J. K. B. 82; 105 L. T. 422; 75 J. P. 378; 27 T. L. R. 564; 55 Sol. Jo. 687; 9 L. G. R. 999; 2 Smith Reg. 279—C. A.) distinguished.		Landauer v. Assor ([1905] 2 K. B. 184; 74 L. J. K. B. 659; 53 W. R. 534; 93 L. T. 20; 21 T. L. R. 429; 10 Com. Cas. 265) discussed.	
<i>Smith v. Newman</i>	196	<i>Strass v. Spillers and Bakers, Ltd.</i>	300
Kent v. Fittall (No. 4) ([1911] 2 K. B. 1102; 81 L. J. K. B. 82; 105 L. T. 422; 75 J. P. 378; 27 T. L. R. 564; 55 Sol. Jo. 687; 9 L. G. R. 999; 2 Smith Reg. 279—C. A.) applied.		Lanston Monotype Corporation v. Anderson ([1911] 2 K. B. 15; 80 L. J. K. B. 951; 104 L. T. 503—decision of Hamilton, J.) reversed	282
<i>Kent v. Fittall (No. 5)</i>	195	Lapington v. Lapington ((1888) 14 P. D. 21; 58 L. J. P. 26; 59 L. T. 608; 52 J. P. 727; 37 W. R. 384) approved.	
Kerrison v. Glyn, Mills, Currie & Co. (102 L. T. 674; 26 T. L. R. 404; 15 Com. Cas. 241) reversed	424	<i>Sterenson v. Sterenson</i>	271
Kinahan & Co., Ltd. v. Parry ([1910] 2 K. B. 389; 102 L. T. 826—decision of Div. Ct.) reversed	8	Larsen v. Sylvester ([1908] A. C. 295; 77 L. J. K. B. 993; 99 L. T. 94; 24 T. L. R. 640; 13 Com. Cas. 328—H. L.) distinguished.	
Kingston-upon-Hull Incorporation for the Poor v. Hackney Union (80 L. J. K. B. 239; 103 L. T. 599; 75 J. P. 46; 9 L. G. R. 42—decision of Div. Ct.) affirmed	472	<i>Thorman v. Doregate Steamship Co., Ltd.</i>	576
Kinnell v. Walker (27 T. L. R. 67—decision of Darling, J.) affirmed	325, 487	Laughton v. Port Erin Commissioners (decision of High Court of Justice of the Isle of Man) reversed	605
Kish v. Taylor ([1910] 2 K. B. 309; 79 L. J. K. B. 1113; 102 L. T. 910; 26 T. L. R. 504; 55 Sol. Jo. 565; 15 Com. Cas. 268; 11 Asp. M. L. C. 421—decision of Walton, J.) reversed	572	Lawford v. Billericay Rural District Council ([1903] 1 K. B. 772; 72 L. J. K. B. 554; 67 J. P. 245; 88 L. T. 317; 51 W. R. 630; 19 T. L. R. 322—C. A.) cited.	
Kitchenham v. Owners of SS. "Johannesburg" —decision of C. A.) affirmed	378	<i>Hodge v. Matlock Bath and Scarthin Nick Urban District Council and Nuttall</i>	334
Knill v. Dumergue (104 L. T. 747; 27 T. L. R. 414; 55 Sol. Jo. 479—decision of Joyce, J.) affirmed	173	Lawson v. Wright ((1786) 1 Cox, 275) explained.	
Koffyfontein Mines, Ltd. v. Mosely ([1911] 1 Ch. 73; 80 L. J. Ch. 111; 103 L. T. 616; 27 T. L. R. 61; 55 Sol. Jo. 44; 18 Mans. 86—decision of C. A.) affirmed	62	<i>Stirling v. Burdett</i>	246
Kynance S.S. Co., Ltd. v. Young , 104 L. T. 397; 27 T. L. R. 306; 16 Com. Cas. 123) cited.		Lawson's Trusts, In re ([1896] 1 Ch. 175; 65 L. J. Ch. 95; 73 L. T. 571; 44 W. R. 280) followed.	
<i>Reliance Marine Insurance Co. v. Duder</i>	298	<i>In re Anderson</i>	24
		Leaver v. Pontypridd Urban District Council (74 J. P. 25—decision of C. A.) reversed	445
		Le Blanche v. London and North-Western Ry. Co. ((1876) 1 C. P. D. 286; 45 L. J. C. P. 521; 34 L. T. 667; 24 W. R. 808—C. A.) approved.	
		<i>Erie County Natural Gas and Fuel Co. v. Carroll</i>	149
		Leeds Corporation v. Sugden (104 L. T. 166; 9 L. G. R. 461—decision of Hamilton, J.) reversed	278
		Lees v. Dunkerley Brothers ((1856) 1 H. & N. 247—dictum of Pollock, C.B.) disapproved	446
		Legge v. Croker ((1811) 1 Ball & B. 506) followed.	
		<i>Angel v. Jay</i>	424

LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.	COL.
<p>Leslie v. Metropolitan Asylums Board ((1896) 68 J. P. 86) distinguished.</p> <p>Bower v. Chapel-en-le-Frith Rural District Council 14</p> <p>Leyman v. Latimer ((1878) 3 Ex. D. 352; 47 L. J. Ex. 470; 37 L. T. 819; 26 W. R. 305; 14 Cox, C. C. 51) doubted.</p> <p><i>In the Estate of Crippen</i> 204</p> <p>Lindsay v. Klein ([1910] S. C. 231; 47 Sc. L. R. 177—decision of Ct. of Sess.) reversed 576</p> <p>Linton v. Linton ((1885) 15 Q. B. D. 239; 54 L. J. Q. B. 529; 52 L. T. 782; 2 Morrell, 179) followed.</p> <p><i>Victor v. Victor</i> 268, 269</p> <p>Lister v. Lane ([1893] 2 Q. B. 212; 62 L. J. Q. B. 583; 69 L. T. 176; 41 W. R. 626) explained and distinguished.</p> <p><i>Lurcott v. Wakely and Wheeler</i> 318</p> <p>Litchfield v. Jones ((1883) 25 Ch. D. 64; 32 W. R. 288) discussed.</p> <p><i>Taylor, Plinston Brothers & Co., Ltd. v. Plinston</i> 96</p> <p>Llanover (Baroness), In re ([1907] 1 Ch. 635; 76 L. J. Ch. 427; 97 L. T. 287) distinguished.</p> <p><i>In re Sumner's Settled Estates</i> 555</p> <p>Lloyd (Edward), Ltd. v. Sturgeon Falls Pulp Co., Ltd. ((1901) 85 L. T. 162) followed.</p> <p><i>In re Arbitration between Crighton and Law Car and General Insurance Corporation, Ltd.</i> 16</p> <p>London and North Western Ry. Co. v. Howley Park Coal and Cannel Co. ([1910] W. N. 163; 103 L. T. 26; 26 T. L. R. 541; 54 Sol. Jo. 616—decision of Eve, J.) varied 506</p> <p>London County Council v. Price's Candle Co., Ltd. ([1908] 2 Ch. 526; 78 L. J. Ch. 1; 99 L. T. 571; 72 J. P. 429; 24 T. L. R. 822; 7 L. G. R. 84—decision of C. A.) affirmed 413</p> <p>Lord Advocate v. Stewart ((1906) 8 F. 579) followed.</p> <p><i>Attorney-General v. Secombe</i> 153</p> <p>Lord Advocate v. Walker Trustees ([1910] S. C. 1037; 47 Sc. L. R. 734—decision of Ct. of Sess.) reversed 462, 546</p> <p>Lovell and Christmas, Ltd. v. Wall (103 L. T. 588; 27 T. L. R. 94; 55 Sol. Jo. 92—decision of Eve, J.) affirmed 619</p>	<p>Lowery v. Walker ([1910] 1 K. B. 173; 79 L. J. K. B. 237; 101 L. T. 873; 26 T. L. R. 108; 51 Sol. Jo. 92—decision of C. A.) reversed 13</p> <p>Lowther v. Carlton ((1741) 2 Atk. 242) followed.</p> <p><i>Wilkes v. Spooner</i> 316</p> <p>Lupton, In re; Ex parte Official Receiver ([1911] W. N. 180; 105 L. T. 336; 27 T. L. R. 566; 55 Sol. Jo. 689—decision of Phillimore, J.) reversed 35</p> <p>Lurcott v. Wakely and Wheeler (decision of Div. Ct.) affirmed 318</p> <p style="text-align: center;">M.</p> <p>"Mac," The ((1882) 7 P. D. 126; 51 L. J. (Adm.) 81; 46 L. T. 907; 4 Asp. M. L. C. 555—C. A.) followed.</p> <p><i>The "Mudlark"</i> 587</p> <p>M'Callum v. Quinn ([1909] S. C. 227; 46 Sc. L. R. 141) distinguished.</p> <p><i>M'Ghee v. Summerlee Iron Co., Ltd.</i> 396</p> <p>M'Cartan v. Belfast Harbour Commissioners ([1910] 2 I. R. 470—decision of C. A., Ireland) affirmed 401</p> <p>Macclesfield Corporation v. Great Central Ry. Co. (decision of Div. Ct.) affirmed on the second ground 257</p> <p>McDermott v. "Tintoretto" (Owners of SS.) ([1909] 2 K. B. 704; 78 L. J. K. B. 1144; 101 L. T. 90; 25 T. L. R. 691; 55 Sol. Jo. 650; 2 B. W. C. C. 208—decision of C. A.) reversed 365</p> <p>McFarland v. Bank of Montreal and Royal Trust Co. (21 Ontario L. R. 1—decision of the Court of Appeal of Ontario) affirmed 166</p> <p>McGlade v. Royal London Mutual Insurance Society, Ltd. (102 L. T. 276; 26 T. L. R. 357; 54 Sol. Jo. 361—decision of Eve, J.) affirmed 76, 236</p> <p>McLean v. Fleming ((1871) L. R. 2 Sc. & Div. 128; 25 L. T. 317; 1 Asp. M. L. C. 160) followed.</p> <p><i>Kish v. Taylor</i> 574, 579</p> <p>M'Neice v. Singer Sewing Machine Co., Ltd. ([1911] S. C. 13; 48 Sc. L. R. 15) approved.</p> <p><i>Pierce v. Provident Clothing and Supply Co., Ltd.</i></p> <p>Magnus, In re; Ex parte Salaman ([1910] W. N. 190; 54 Sol. Jo. 721—decision of Phillimore, J.) affirmed 33, 34</p>

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Main Colliery Co. v. Davies ([1900] A. C. 358; 69 L. J. Q. B. 755; 83 L. T. 83; 65 J. P. 20; 16 T. L. R. 460; H. L.) explained.		Measures Brothers, Ltd. v. Measures (decision of Joyce, J.) affirmed .	70
<i>Tamworth Colliery Co., Ltd. v. Hall</i> .	371, 372	Mégret, In re ([1901] 1 Ch. 547; 84 L. T. 192) distinguished.	
Manchester Ship Canal Co. v. London and North-Western Ry. Co. ([1910] 2 K. B. 913; 79 L. J. K. B. 1103; 103 L. T. 317—decision of Rly. & Can. Com.) affirmed .	508, 509	<i>In re Pryce; Lawford v. Pryce</i> .	94, 95
Manchester Ship Canal Co. v. Manchester Racecourse Co. ([1901] 2 Ch. 37; 70 L. J. (Ch.) 468; 84 L. T. 436; 49 W. R. 418; 17 T. L. R. 410—C. A.) distinguished.		Meters, Ltd. v. Metropolitan Gas Meters, Ltd. (27 R. - P. C. 721—decision of Eve, J.) affirmed .	457
<i>Ryan v. Thomas</i> .	98	Metropolitan Water Board v. Brooks ([1910] 2 K. B. 134; 79 L. J. K. B. 722; 103 L. T. 72; 74 J. P. 233; 8 L. G. R. 464—decision of Channell, J.) affirmed, but on different grounds .	417
Mandeville v. Mandeville (1889) 23 L. R. Ir. 339) followed.		Midland Ry. Co. v. Great Western Ry. Co. ((1873) L. R. 8 Ch. 841; 42 L. J. Ch. 438; 28 L. T. 718; 21 W. R. 657) applied.	
<i>In re Roe; Roe v. Squire</i> .	215	<i>Great Central Ry. Co. v. Midland Ry. Co.</i> .	507
Mansell v. Valley Printing Co. ([1908] 2 Ch. 441; 77 L. J. Ch. 742; 99 L. T. 464; 24 T. L. R. 802; 52 Sol. Jo. 660) applied.		" Milan ," <i>The</i> ((1861) Lush. 388) followed.	
<i>Bowden Brothers v. Amalgamated Pictorials, Ltd.</i> .	104	<i>Owners of Cargo of Steamship "Tongariro" v. Owners of Steamship "Drumlanrig." The "Drumlanrig"</i> .	586
Markt & Co., Ltd. v. Knight Steamship Co., Ltd.; Sale & Frazar, Ltd. v. Knight Steamship Co., Ltd. (decision of Bucknill, J.) reversed .	486	Milch v. Coburn (27 T. L. R. 170; 55 Sol. Jo. 170—decision of Joyce, J.) reversed	315
Marriott v. Chamberlain (1886) 17 Q. B. D. 154; 55 L. J. Q. B. 448; 54 L. T. 714; 34 W. R. 783) discussed.		Mills v. United Counties Bank, Ltd. ([1911] 1 Ch. 669; 80 L. J. Ch. 334; 104 L. T. 632; 27 T. L. R. 366; 55 Sol. Jo. 408—decision of Eve, J.) affirmed .	431
<i>Nash v. Layton</i> .	178	Mitchell v. Glamorganshire Colliery Co. cited.	
Marshall v. Owners of SS. "Wild Rose" ([1909] 2 K. B. 46; 78 L. J. K. B. 536; 100 L. T. 739; 25 T. L. R. 452; 53 Sol. Jo. 448; 11 Asp. M. L. C. 251; 2 B. W. C. C. 76—decision of C. A.) affirmed .	376	<i>Jenkins v. Standard Colliery Co.</i> .	388
Martyn, In re; Coode v. Martyn (1900) 69 L. J. Ch. 733—followed.		Mitchell v. Guildford Union ((1903) 68 J. P. 84) distinguished.	
<i>In re Llewellyn; Llewellyn v. Llewellyn</i> .	555	<i>Bower v. Chapel-en-le-Frith Rural District Council</i> .	44
Maryon-Wilson's Estate, In re ([1911] 2 Ch. 58; 80 L. J. Ch. 467; 104 L. T. 671; 27 T. L. R. 429; 55 Sol. Jo. 499—decision of Eve, J.) affirmed .	636	Moel Tryvan Shipping Co., Ltd. v. Weir (Andrew) & Co. (101 L. T. 954; 54 Sol. Jo. 217; 15 Com. Cas. 61; 11 Asp. M. L. C. 342—decision of Bray, J.) affirmed .	569
Massey, In re ((1870) L. R. 9 Eq. 367; 39 L. J. Ch. 492; 22 L. T. 195; 18 W. R. 444) applied.		Monsen v. Macfarlane ([1895] 2 Q. B. 562; 65 L. J. Q. B. 57; 73 L. T. 548; 8 Asp. M. L. C. 93—C. A.) distinguished.	
<i>In re Motor Cabs, Ltd.</i> .	602	<i>Thorman v. Dowgate Steamship Co., Ltd.</i> .	576
Maughan v. Free Church of Scotland (1893) 20 R. (Ct. of Sess.) 759) followed.		Montague v. Montague ((1852) 15 Beav. 565) followed.	
<i>R. v. Special Commissioners of Income Tax; Ex parte Essex Hall</i> .	281	<i>In re Peel's Settlement, Biddulph v. Peel</i> .	475
Mead v. Ball, Baker & Co. (28 T. L. R. 81, C. A.—decision of Lord Alverstone) affirmed .	61	Montreal Light, Heat and Power Co. v. Sedgwick and Others (41 S. C. R. 639—decision of Supreme Court of Canada) reversed .	299

LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.

Moore, *In re*; Trafford v. Machonochie ((1888) 39 Ch. D. 116; 57 L. J. Ch. 936; 59 L. T. 681; 52 J. P. 596; 37 W. R. 83) distinguished.

In re Charleston, Bracey v. Sherwin . . . 664

Moore v. Manchester Liners, Ltd. ([1910] A. C. 498; 79 L. J. K. B. 1175; 103 L. T. 226; 26 T. L. R. 618; 54 Sol. Jo. 703; 3 B. W. C. C. 527) discussed.

Kitchenham v. Owners of S.S. "Johannesburg"; Leach v. Oakley Street & Co. . . . 378

Morgan v. Dixon (William), Ltd. ([1911] S. C. 403; 48 Sc. L. R. 296; 4 B. W. C. C. 363—decision of Ct. of Sess.) affirmed (Lord Shaw dissenting) . . . 375

Morphett v. Morphett ((1869) L. R. 1 P. & D. 702; 38 L. J. P. & M. 23; 19 L. T. 801; 17 W. R. 471) not followed.

Browning v. Browning . . . 271

Moss Steamship Co., Ltd. v. Whitney ([1910] 2 K. B. 813; 79 L. J. K. B. 1038; 103 L. T. 344; 26 T. L. R. 650; 54 Sol. Jo. 736; 15 Com. Cas. 316; 11 Asp. M. L. C. 507—decision of C. A.) affirmed . . . 580

Moult v. Halliday ([1898] 1 Q. B. 125; 67 L. J. Q. B. 451; 62 J. P. 8; 77 L. T. 794; 14 T. L. R. 109; 46 W. R. 318) distinguished.

George v. Davies . . . 403

Mundy and Roper's Contract, *In re* ([1899] 1 Ch. 275; 68 L. J. Ch. 135; 79 L. T. 583; 47 W. R. 583) considered.

In re Bruen's Estate . . . 556

Mundy and Roper's Contract, *In re* ([1899] 1 Ch. 275; 68 L. J. Ch. 135; 79 L. T. 583; 47 W. R. 226—C. A.) distinguished.

In re Collis's Estate . . . 560

Munro v. Didcot (29 N. L. R. 249—decision of the Supreme Court, Natal) affirmed . . . 163

Murphy v. R. ([1911] 2 I. R. 88; 45 I. L. T. 21—decision of C. A., Ireland) affirmed . . . 341

N.

Natal Bank, Ltd. v. Rood ([1909] T. S. 243—decision of Transvaal Supreme Court) affirmed . . . 163

National Phonograph Co. of Australia v. Menck (7 Commonwealth L. R. 481—decision of High Court of Australia) reversed . . . 460

COL.

National Telephone Co. v. Smith ([1909] S. C. 1363; 46 Sc. L. R. 988) not followed.

Calico Printers Association, Ltd. v. Higham . . . 391

Neal, *Ex parte*; *In re* Batey ((1880) 14 Ch. D. 579; 43 L. T. 264; 28 W. R. 875) not followed.

Victor v. Victor . . . 268, 269

Nedby v. Nedby ((1852) 5 De G. & Sm. 377; 21 L. J. Ch. 446) approved.

Bank of Montreal v. Stuart . . . 266

New Monckton Collieries, Ltd. v. Keeling ([1911] 1 K. B. 250; 80 L. J. K. B. 539; 103 L. T. 622; 27 T. L. R. 90; 4 B. W. C. C. 49—decision of C. A.) reversed . . . 370

New Monckton Collieries, Ltd. v. Keeling ([1911] A. C. 648; 80 L. J. K. B. 1205; 105 L. T. 337; 27 T. L. R. 551; 55 Sol. Jo. 687; 4 B. W. C. C. 332) cited.

Lee v. "Bessie" (Owner) . . . 370

Nisbet v. Rayne and Burn ([1910] 2 K. B. 689; 80 L. J. K. B. 84; 103 L. T. 178; 26 T. L. R. 632; 54 Sol. Jo. 719; 3 B. W. C. C. 507) disagreed with.

Murray v. Denholm & Co. . . . 364

Nixon's Navigation Co., *In re* ([1897] 1 Ch. 872; 66 L. J. Ch. 406) followed.

In re Thomas De La Rue & Co., Ltd. . . . 79

Noble v. Cass ((1828) 2 Sim. 343) applied.

In re Laron's Settlement, Laron v. Laron . . . 558

Northage, *In re* ((1891) 60 L. J. Ch. 488; 64 L. T. 625) followed.

In re Hume Nisbet's Settlement . . . 558

Northumberland (Duke) v. Inland Revenue Commissioners ([1911] 2 K. B. 343; 80 L. J. K. B. 866; 104 L. T. 506) reversed . . . 533

Nutter v. Accrington Local Board of Health ((1878) 4 Q. B. D. 379; 48 L. J. Q. B. 487; 40 L. T. 802—C. A.) explained and distinguished.

In re Earl of Stamford and Warrington; Payne v. Grey (No. 2) . . . 264

O.

O'Mahoney v. Burdett ((1874) L. R. 7 H. L. 388; 31 L. T. 765; 23 W. R. 304) followed.

In re Mackenzie; Mackenzie v. Mackenzie . . . 664

LIST OF CASES AFFIRMED, REVERSED, ETC.

COL.	COL.
Osborne v. Amalgamated Society of Railway Servants (27 T. L. R. 115—decision of Warrington, J.) reversed . . . 621	Pfeiffer v. Midland Ry. Co. ((1886) 18 Q. B. D. 243; 35 W. R. 355) followed. <i>Hughes v. Dublin United Tramways Co., Ltd.</i> 489
Osmond v. Campbell and Harrison, Ltd. ([1905] 2 K. B. 852; 75 L. J. K. B. 1; 93 L. T. 724; 51 W. R. 117; 22 T. L. R. 4) considered. <i>Tamworth Colliery Co., Ltd. v. Hall</i> . . . 371	Phillips v. Phillips ((1862) 5 L. T. 655) distinguished. <i>Cloutte v. Storey</i> 477
Osmond v. Mutual Cycle and Manufacturing Supply Co. ([1899] 2 Q. B. 488; 68 L. J. Q. B. 1027; 81 L. T. 254; 48 W. R. 125—C. A.) distinguished. <i>Jones v. Llanrwst Urban District Council</i> 494	Pope v. Bavidge ((1854) 10 Exch. 73) not followed. <i>Dunford & Co., Ltd. v. Cia Anonima Maritima Union</i> 570
P.	Pope v. Hill's Plymouth Co., Ltd. (102 L. T. 632; 3 B. W. C. C. 339—decision of C. A.) affirmed 379
Paget v. Paget ([1898] 1 Ch. 474; 67 L. J. Ch. 266; 78 L. T. 306; 46 W. R. 472; 14 T. L. R. 315) mentioned. <i>Hall v. Hall</i> 264	Porte v. Williams ([1911] 1 Ch. 188; 80 L. J. Ch. 127; 103 L. T. 798; 55 Sol. Jo. 45) followed. <i>In re Hudson; Spencer v. Turner</i> . . . 152
Parrish v. Hackney Borough Council ([1911] 2 K. B. 822; 27 T. L. R. 532; 9 L. G. R. 983—decision of Warrington J.) affirmed 514	Pouey v. Hordern ([1900] 1 Ch. 492; 69 L. J. Ch. 231; 82 L. T. 51; 16 T. L. R. 191) distinguished; . <i>In re Pryce; * Lawford v. Pryce</i> . . . 94, 95
Pearce v. Brooks ((1866) L. R. 1 Ex. 213) applied. <i>Upphill v. Wright</i> 99	Poulton & Son v. Anglo-American Oil Co., Ltd. (27 T. L. R. 38—decision of Channell, J.) affirmed 538
Pearson v. Dolman ((1866) L. R. 3 Eq. 315; 36 L. J. Ch. 258; 15 W. R. 120) approved. <i>In re Lord Nunburnholme; Wilson v. Nunburnholme</i> 665	Prested Miners Gas Indicating Electric Lamp Co., Ltd. v. Garner (Henry), Ltd. ([1910] 2 K. B. 776; 79 L. J. K. B. 1143; 103 L. T. 223; 26 T. L. R. 644; 54 Sol. Jo. 750—decision of Walton, J.) affirmed . . 101, 538
Peart v. Bushell ((1827) 2 Sim. 38) not followed. <i>United Mining and Finance Corporation, Ltd. v. Becher</i> 604	Proctor & Sons v. Robinson ([1911] 1 K. B. 1004; 80 L. J. K. B. 641; 3 B. W. C. C. 41—C. A.) considered. <i>Carlin v. Alexander Stephen & Sons, Ltd.</i> 394, 397
Pemberton v. Hughes ([1899] 1 Ch. 781; 68 L. J. Ch. 281; 80 L. T. 369; 47 W. R. 354; 15 T. L. R. 211—C. A.) cited. <i>Scarpetta v. Lowenfield</i> 93	Proudfoot v. Hart ((1890) 25 Q. B. D. 42; 59 L. J. Q. B. 389; 63 L. T. 171; 55 J. P. 20; 38 W. R. 730) followed. <i>Lurcott v. Wakely and Wheeler</i> . . . 318
Penn v. Spiers & Pond, Ltd. ([1908] 1 K. B. 766; 77 L. J. K. B. 542; 98 L. T. 541; 24 T. L. R. 354; 52 Sol. Jo. 280—C. A.) applied. <i>Knott v. Tingle, Jacobs & Co.</i> 365	Pryce, In re; Lawford v. Pryce (104 L. T. 202; 55 Sol. Jo. 385—decision of Parker, J.) reversed 95
Perry v. Wright ([1908] 1 K. B. 441; 77 L. J. K. B. 236; 98 L. T. 327; 24 T. L. R. 186—C. A.) approved and followed. <i>Babcock & Wilcox, Ltd. v. Young</i> . . . 366	Pyke, Ex parte ((1878) 8 Ch. D. 754; 47 L. J. Bcy. 100; 38 L. T. 923; 26 W. R. 806) followed. <i>In re O'Shea; Ex parte Lancaster</i> . . 32, 33
Persse, In re , followed. <i>In re a Debtor</i> (No. 1838 of 1911) . . . 26	R.
Persse, In re (55 Sol. Jo. 220—decision of Div. Ct.) affirmed 26	R. v. Ball (decision of C. C. A.) reversed . . 115
	R. v. Bromhead ((1906) 71 J. P. 103) approved. <i>R. v. Thompson</i> 117

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
R. v. Broome ((1851) 18 L. T. (O. S.) 19) disapproved.		R. v. Locke ([1910] 2 K. B. 201; 79 L. J. K. B. 659; 102 L. T. 598; 74 J. P. 238; 26 T. L. R. 486; 8 L. G. R. 588—decision of Div. Ct.) reversed	352
<i>R. v. Porter</i>	132	R. v. London Justices; Ex parte Lambert ([1892] 1 Q. B. 664; 61 L. J. M. C. 104; 66 L. T. 678; 40 W. R. 575; 56 J. P. 421; 17 Cox, C. C. 526) applied.	
R. v. Connell ((1853) 6 Cox, C. C. 178) distinguished.		<i>R. v. Dickinson; Ex parte Davis</i>	352
<i>R. v. White</i>	137	R. v. Metropolitan Police (Commissioner of); Ex parte Pearce (80 L. J. K. B. 223; 104 L. T. 135; 75 J. P. 85) overruled.	
R. v. Cutbush ((1867) L. R. 2 Q. B. 379; 36 L. J. M. C. 70; 16 L. T. 282; 15 W. R. 742; 10 Cox, C. C. 489) discussed.		<i>R. v. Commissioner of Metropolitan Police; Ex parte Holloway</i>	413
<i>R. v. Marten; Ex parte Smythe</i>	346	R. v. Munday ((1799) 2 Leach, C. C. 3850) followed.	
R. v. Davidson overruled.		<i>R. v. Richards</i>	134
<i>R. v. Ettridge</i>	140	R. v. Pratt (1855) 4 E. & B. 860) followed.	
R. v. Edwards ((1909) 73 J. P. 286) followed.		<i>Pratt v. Martin</i>	237
<i>R. v. Cooper</i>	138	R. v. Russell ((1827) 6 B. & C. 566; 9 Dow. & Ry. K. B. 566; 5 L. J. (O. S.) M. C. 80) disapproved.	
R. v. Fisher (No. 1) followed.		<i>Denaby and Cadeby Main Collieries, Ltd. v. Anson</i>	594
<i>R. v. Ellis</i>	135	R. v. Shoreditch Assessment Committee, Ex parte Morgan (26 T. L. R. 553—decision of Div. Ct.) affirmed.	513
R. v. Gavin ((1885) 15 Cox, C. C. 656) disapproved.		R. v. Smith ((1897) 61 J. P. 120; 18 Cox, C. C. 470) cited.	
<i>R. v. Best</i>	117	<i>R. v. Thompson</i>	117
R. v. Hamilton ((1908) 72 J. P. N. C. 365) considered.		R. v. Turner considered and explained.	
<i>R. v. Smith; R. v. Wilson</i>	141	<i>R. v. Waller</i>	124
R. v. Hotine ((1904) 68 J. P. 143—Common Serjeant, C. C. Ct.) followed.		Ralli v. Universal Marine Insurance Co., Ltd. ((1862) 6 L. T. 34; 31 L. J. Ch. 313; 8 Jur. (N.S.) 495; 4 De G. F. & J. 1; 10 W. R. 278) discussed.	
<i>R. v. O'Brien</i>	135, 136	<i>Strass v. Spillers & Bakers, Ltd.</i>	300
R. v. Hughes ((1860) Bell, C. C. 242; 29 L. J. M. C. 71; 1 L. T. 450; 8 W. R. 195; 8 Cox, C. C. 278) followed.		Ram Lal Sett v. Kanai Lal Sett (12 Indian L. R.; Calcutta Series) approved.	
<i>R. v. Godspeed</i>	128	<i>Bhagabati Barmanya v. Kali Charan Singh</i>	173
R. v. Income Tax Special Commissioners; Ex parte Essex Hall (80 L. J. K. B. 788; 104 L. T. 31; 75 J. P. 155; 27 T. L. R. 190—decision of Div. Ct.) reversed	281	Ranson v. Platt ([1911] 1 K. B. 499; 80 L. J. K. B. 250; 103 L. T. 839—decision of Div. Ct.) reversed	21
R. v. Ireland ([1910] 1 K. B. 654; 79 L. J. K. B. 338; 102 L. T. 608; 74 J. P. 206; 26 T. L. R. 267; 54 Sol. Jo. 543) explained and approved.		"Raphael" (Owners of) v. Brandy ([1911] 1 K. B. 376; 80 L. J. K. B. 217; 103 L. T. 746; 27 T. L. R. 127; 4 B. W. C. C. 6; 11 Asp. M. L. C. 541—decision of C. A.) affirmed	365
<i>R. v. Muchardy</i>	142	Ravensworth, In re; Ravensworth v. Tindale ([1905] 2 Ch. 1; 74 L. J. Ch. 353; 92 L. T. 490; 21 T. L. R. 357, C. A.) distinguished.	
R. v. Leake ((1833) 5 B. & Ad. 469; 2 Nev. & M. 595) followed.		<i>In re Earl of Sheffield, Ryde v. Bristow</i>	654
<i>Arnold v. Morgan</i>	345		
R. v. Lines ([1902] 1 K. B. 199; 71 L. J. K. B. 125; 85 L. T. 790; 50 W. R. 303; 66 J. P. 24; 18 T. L. R. 176; 20 Cox, C. C. 142) applied.			
<i>R. v. McLauchlan</i>	238		
R. v. Linneker ([1906] 2 K. B. 99; 75 L. J. K. B. 385; 94 L. T. 856; 70 J. P. 293; 54 W. R. 494; 22 T. L. R. 495; 21 Cox, C. C. 196) questioned.			
<i>R. v. White</i>	137		
Y.D.	[15]		23

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Raynes Park Golf Club, <i>In re, Ex parte</i> Official Receiver ([1899] 1 Q. B. 961; 68 L. J. Q. B. 529; 80 L. T. 388; 47 W. R. 496; 6 Mans. 316) doubted.		Robinson v. Beaconsfield Rural District Council (27 T. L. R. 319; 9 L. G. R. 421—decision of Joyce, J.) affirmed	439
<i>In re John Tweedle & Co.</i>	85	Robinson v. Shepherd ((1863) 4 De G. J. & S. 129) followed.	
Red "R" Steamship Co. v. Allatini Brothers and Others (101 L. T. 510; 25 T. L. R. 791; 14 Com. Cas. 303; 11 Asp. M. L. C. 317—decision of C. A.) affirmed	569	<i>In re Dering; Neale v. Beale</i>	654, 655
Richardson, <i>In re; Ex parte</i> Governors of St. Thomas's Hospital (decision of Phillimore, J.) reversed	34	Robinson Printing Co. v. Chic, Ltd. ([1905] 2 Ch. 123; 74 L. J. Ch. 399; 93 L. T. 256; 23 W. R. 681; 21 T. L. R. 446; 12 Mans. 314) followed.	
Richardson v. Mellish ((1824) 2 Bing. 229; 9 Moore C. P. 435; 1 C. & P. 241; 3 L. J. (O. S.) C. P. 265; Ry. & M. 66) discussed.		<i>Deyes v. Wood</i>	79
<i>Chaplin v. Hicks</i>	151	Rochdale Canal Co. v. Brewster ([1894] 2 Q. B. 852; 64 L. J. Q. B. 37; 71 L. T. 243; 59 J. P. 132; 9 R. 680 —C. A.) distinguished.	
Richardsons and Samuel, <i>In re</i> ([1898] 1 Q. B. 261; 8 Asp. M. L. C. 330; 66 L. J. Q. B. 868; 77 L. T. 679; 3 Com. Cas. 79; 14 T. L. R. 15, C. A.) distinguished.		<i>Young & Co. v. Liverpool Assessment</i> <i>Committee</i>	518
<i>Thorman v. Dwygate Steamship Co.,</i> <i>Ld.</i>	576	Rogers, <i>In re</i> ([1911] 1 K. B. 104; 80 L. J. K. B. 204; 103 L. T. 576; 27 T. L. R. 59; 55 Sol. Jo. 78— decision of Phillimore, J.) reversed	30
Rigby v. Connol ((1880) 14 Ch. D. 482; 49 L. J. Ch. 328; 42 L. T. 139; 28 W. R. 650) discussed.		Rogers, Eungblut & Co. v. Martin (102 L. T. 687; 26 T. L. R. 459; 54 Sol. Jo. 478—decision of Div. Ct.) affirmed	179
<i>Osborne v. Amalgamated Society of</i> <i>Railway Servants</i>	621	Rosefield v. Provincial Union Bank (dec- ision of Bray, J.) affirmed	40
Ripley v. Griffiths ((1902) 19 R. P. C. 590— <i>dictum</i> of Farwell, L.J.) followed.		Royou v. Paul ((1858) 28 L. J. Ch. 555) distinguished.	
<i>Lever Brothers, Ltd. v. Mashro Equit-</i> <i>able Pioneers Society, Ltd.</i>	625	<i>Laughton v. Commissioner of Port Erin</i>	605
Ripley v. Paper Bottle Co. ((1887) 57 L. J. Ch. 327) disapproved.		Ruthin and Cerrig-y-Druedion Railway Act, <i>In re</i> ((1886) 32 Ch. D. 438) applied.	
<i>Jones v. Pacaya Rubber and Produce</i> <i>Co., Ltd.</i>	83	<i>In re Southport and Lytham Tram-</i> <i>roads Act, 1900; Ex parte Heskeith</i>	628
Rishton v. Grissell ((1868) L. R. 5 Eq. 326) distinguished.		Rylands v. Fletcher ((1868) L. R. 3 H. L. 330; 37 L. J. Ex. 361; 19 L. T. 220) applied.	
<i>In re Spanish Prospecting Co., Ltd.</i>	87	<i>Jones v. Llanrwst Urban District</i> <i>Council</i>	642
Robertson v. Bristol Corporation ([1900] 2 Q. B. 198; 69 L. J. Q. B. 590; 82 L. T. 516; 64 L. T. 516; 48 W. R. 498; 16 T. L. R. 358, C. A.) considered and applied.		S.	
<i>Wandswoorth Borough Council v. Golds</i>	415	Sadler v. Great Western Rail. Co. ([1896] A. C. 450; 65 L. J. Q. B. 46; 74 L. T. 561; 45 W. R. 51) discussed.	
Robinson, <i>In re; Clarkson v. Robinson</i> (No. 1) (27 T. L. R. 22—decision of Neville, J.) affirmed	427	<i>Compania Sansinena de Carnes Conge-</i> <i>ladas v. Houlder Brothers & Co.,</i> <i>Ld.</i>	485
Robinson, <i>In re; Clarkson v. Robinson</i> (No. 2) ([1910] 2 Ch. 571; 80 L. J. Ch. 39; 103 L. T. 497; 27 T. L. R. 37—decision of Neville, J.) affirmed	427	Saffery v. Mayer ([1901] 1 K. B. 11; 70 L. J. K. B. 145; 83 L. T. 394; 49 W. R. 54; 64 J. P. 740; 49 W. R. 54; 17 T. L. R. 15—C. A.) dis- tinguished.	
		<i>In re O'Shea; Ex parte Lancaster</i>	32, 33

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Saloman v. Saloman ([1897] A. C. 22; 66 L. J. Ch. 35; 75 L. T. 426; 45 W. R. 193; 4 Mans. 89) followed.		Sleven, <i>In re</i> ([1891] 2 Ch. 236; 60 L. J. Ch. 439; 64 L. T. 311; 39 W. R. 578) applied.	
<i>Attorney-General for Canada v. Standard Trust Company of New York</i>	70	<i>In re Geikie; Robson v. Paterson</i> . . .	53
Sandrey v. Michell ((1863) 3 B. & S. 405; 32 L. J. Q. B. 100; 7 L. T. 849; 9 Jur. N. S. 968; 11 W. R. 363) distinguished.		Smith v. General Motor Car Co., Ltd. (3 B. W. C. C. 500—decision of C. A.) affirmed . . .	398
<i>Cope v. Bennett</i>	208	Smith v. Lion Brewery Co., Ltd. ([1909] 2 K. B. 912; 78 L. J. K. B. 1089; 101 L. T. 145; 73 J. P. 447; 25 T. L. R. 748; 53 Sol. Jo. 696; 16 Mans. 326—decision of C. A.) affirmed . . .	281, 302
Sanitary Carbon Co., <i>In re</i> ([1877] W. N. 223) commented upon.		Smith v. Martin and Kingston-upon-Hull Corporation (75 J. P. 135; 27 T. L. R. 165; 9 L. G. R. 156—decision of Lawrance, J.) reversed in part . . .	440
<i>East v. Bennett Brothers, Ltd.</i> . . .	75	Smith v. Smith ((1861) 3 Giff. 263; 31 L. J. Ch. 91; 5 L. T. 302; 7 Jur. (N.S.) 240) explained and distinguished.	
Saqui and Lawrence v. Stearns ([1910] W. N. 147; 102 L. T. 915; 26 T. L. R. 501; 54 Sol. Jo. 565—decision of Walton, J.) affirmed . . .	290	<i>Turner v. Turner</i>	213
"Scarsdale," <i>The</i> ([1907] A. C. 373; 76 L. J. P. 117; 97 L. T. 526; 23 T. L. R. 729) followed.		Smurthwaite v. Hannay ([1894] A. C. 494; 63 L. J. Q. B. 737; 71 L. T. 157; 43 W. R. 113; 6 R. 299; 7 Asp. M. L. C. 485) discussed.	
<i>Haglet v. Thompson</i>	567	<i>Compania Sansinena de Carnes Congeladas v. Houlder Brothers & Co., Ltd.</i>	485
Seldon v. Wilde ([1910] 2 K. B. 9; 79 L. J. K. B. 621—decision of Darling, J.) affirmed . . .	596	Snowdon, <i>Ex parte</i> ((1881) 17 Ch. D. 44; 50 L. J. Ch. 540; 44 L. T. 830; 29 W. R. 654) explained.	
Serjeant v. Dale ((1877) 2 Q. B. D. 558; 46 L. J. Q. B. 781; 37 L. T. 153) cited.		<i>Stirling v. Burdett</i>	216
<i>Tolpuitt (H.) & Co., Ltd. v. Mole</i> . . .	107	Solicitor, <i>In re, A; Ex parte Hales</i> ([1907] 2 K. B. 539; 76 L. J. K. B. 931; 97 L. T. 212; 23 T. L. R. 573) not followed.	
Sharp v. Dawes ((1876) 2 Q. B. D. 26; 46 L. J. Q. B. 104; 36 L. T. 188; 25 W. R. 66—C. A.) commented upon.		<i>United Mining and Finance Corporation, Ltd. v. Becker</i>	604
<i>East v. Bennett Brothers, Ltd.</i> . . .	75	Southcote v. Stanley ((1856) 1 H. & N. 247; 25 L. J. Ex. 339) disapproved.	
Shaw, <i>In re</i> ((1901) 83 L. T. 754) explained and distinguished.		<i>Lees v. Dunkerley Brothers</i>	372
<i>In re Sunderland, sub. nom In re Sunderland; Ex parte Leech and Simpkinson</i>	29	Southport and Lytham Tramroads Act, 1900, <i>In re; Ex parte Hesketh</i> (decision of Warrington, J.) reversed . . .	628
Sheffield (Earl), <i>In re; Ryde v. Bristow</i> (80 L. J. Ch. 313; 104 L. T. 412—decision of Neville, J.) affirmed . . .	654	Sovereign Life Assurance Co., <i>In re</i> ((1889) 42 Ch. D. 540; 58 L. J. Ch. 811; 61 L. T. 455; 38 W. R. 58) distinguished.	
Shenstone v. Freeman ([1910] 2 K. B. 84; 79 L. J. K. B. 982; 102 L. T. 682; 26 T. L. R. 416; 54 Sol. Jo. 477) approved.		<i>Empire Guarantee and Insurance Corporation, Ltd., <i>In re</i></i>	294
<i>Rogers, Eungblut & Co. v. Martin</i> . . .	179	Spanish Prospecting Co., Ltd., <i>In re</i> (decision of Eady, J.) reversed . . .	87
Shrimpton v. Hertfordshire County Council (74 J. P. 305; 8 L. G. R. 710—decision of C. A.) reversed . . .	440	Spencer v. Registrar of Titles (decision of Supreme Court of Western Australia) affirmed . . .	140
Simner v. Watney ((1911), <i>Times</i> , December 20th—decision of Hamilton, J.) affirmed	315		
Slator v. Jones ((1873) L. R. 8 Ex. 186; 42 L. J. Ex. 122; 29 L. T. 56; 21 W. R. 815) applied.			
<i>West Yorkshire Darracq Agency, Ltd. v. Coleridge</i>	97		

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Spillers & Bakers, Ld. v. Great Western Ry. Co. (Association of Private Owners of Railway Rolling Stock, Interveners) ([1910] 1 K. B. 778; 79 L. J. K. B. 771; 102 L. T. 654; 26 T. L. R. 315—decision of Rly. & Can. Com.) affirmed	507	Tatam v. Reeve ([1893] 1 Q. B. 44; 62 L. J. Q. B. 30; 67 L. T. 683; 57 J. P. 118; 41 W. R. 174; 5 R. 83) distinguished.	
		<i>In re O'Shea; Ex parte Lancaster</i> 32, 33	
Staffordshire Bank v. Weaver ([1884] W. N. 78) overruled.		Taylor, Plinston Brothers & Co., Ld. v. Plinston ([1911] 2 Ch. 368; 27 T. L. R. 556—decision of Warrington, J.) reversed	96, 490
<i>Deighton v. Cockle</i>	483	Thacker v. Hardy ((1878) 4 Q. B. D. 685; 48 L. J. Q. B. 289; 39 L. T. 595; 27 W. R. 158—C. A.) considered.	
Stevenson v. Stevenson (decision of Deane, J.) affirmed	271	<i>Richards v. Starck</i>	239
Stewart v. Williamson ([1909] S. C. 1254; 46 Sc. L. R. 918—decision of Ct. of Sess.) affirmed	546	Thames and Mersey Marine Insurance Co. v. "Gunford" Ship Co.; Southern Marine Mutual Insurance Association, Ld. v. "Gunford" Ship Co. ([1910] S. C. 1072; 47 Sc. L. R. 860—decision of Ct. of Sess.) reversed on the second ground	296
Strang, Steel & Co. v. Scott & Co. ((1889) 14 App. Cas. 601; 59 L. J. P. C. 1; 61 L. T. 597; 38 W. R. 452; 6 Asp. M. L. C. 419) discussed and applied.		Thomas (T. W.) & Co., Ld. v. Portsea Steamship Co., Ld. ([1911] P. 54; 80 L. J. P. 36; 104 L. T. 10; 11 Asp. M. L. C. 530—C. A.) decision of C. A.	571
<i>Kish v. Taylor</i>	572	Thompson v. Equity Fire Insurance Co. and Union Bank of Canada (41 Can. S. C. R. 491—decision of Supreme Court of Canada) reversed	289
Strangways, In re; Hickley v. Strangways ((1886) 34 Ch. D. 423; 56 L. J. Ch. 195; 55 L. T. 714) distinguished.		Thompson v. Sunderland Gas Co. ((1879) 2 Ex. Div. 429; 46 L. J. Ex. 710; 37 L. T. 30; 25 W. R. 809) followed.	
<i>In re Llewellyn; Llewellyn v. Llewellyn</i> 555		<i>Schweder v. Worthing Gaslight and Coke Co.</i>	244
Suffolk County Lunatic Asylum v. Stow Union ((1897) 76 L. T. 494; 61 J. P. 328; 45 W. R. 620) overruled.		Thorndike v. Hunt ((1859) 3 De G. & J. 563) distinguished.	
<i>Glamorgan County Asylum (Committee of Visitors) v. Cardiff Guardians</i>	469	<i>Cloutte v. Storey</i>	637
Surbiton Urban District Council v. Callender Cable and Construction Co., Ld. ((1910) 8 L. G. R. 244) followed.		"Tongariro" (Owners of Cargo of Steamship) v. "Drumlanrig" (Owners of Steamship); The "Drumlanrig" ([1910] P. 249; 79 L. J. P. 100; 103 L. T. 359; 26 T. L. R. 578; 11 Asp. M. L. C. 451—decision of C. A.) affirmed	586
<i>Poole Corporation v. Bournemouth Corporation</i>	282	Torrens v. Walker ([1906] 2 Ch. 166; 75 L. J. Ch. 645; 95 L. T. 409; 54 W. R. 584) explained and distinguished.	
"Swansea Vale" (Owners of SS.) v. Rice (102 L. T. 270; 26 T. L. R. 276; 3 B. W. C. C. 152—decision of C. A.) affirmed	377	<i>Lureott v. Wakely and Wheeler</i>	318
Symington v. Caledonian Ry. Co. ([1911] S. C. 552; 48 Sc. L. R. 539—decision of Ct. of Sess.) reversed	421	Toulmin v. Steere (1817) 3 Mer. 210) distinguished.	
		<i>Manks v. Whiteley</i>	432
	T.	Towers v. African Tug Co. ([1904] 1 Ch. 558; 73 L. J. Ch. 395; 90 L. T. 298; 52 W. R. 530; 20 T. L. R. 292; 11 Mans. 198—C. A.) distinguished.	
Tamworth Colliery Co., Ld. v. Hall ([1911] 1 K. B. 341; 80 L. J. K. B. 304; 103 L. T. 782; 4 B. W. C. C. 107—decision of C. A.) varied	371	<i>Mosely v. Koffyfontein Mines, Ld.</i>	82
Tanner v. Heard ((1857) 23 Beav. 555; 3 Jur. (N. S.) 427; 5 W. R. 420) followed.			
<i>Williams v. Jones</i>	436		
Tarling v. Riordan ((1878) 2 L. R. Ir. 82) approved.			
<i>Jackson v. Rotax Motor and Cycle Co.</i> 536			

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
Tritton , <i>In re</i> (1889) 61 L. T. 301; 6 Mor. 250) followed.		Wallis, Son and Wells v. Pratt and Haynes ([1910] 2 K. B. 1003; 79 L. J. K. B. 1013; 103 L. T. 118; 26 T. L. R. 572—decision of C. A.) reversed . . .	540
<i>In re Thynne</i> ; <i>Thynne v. Grey</i> . . .	39, 552	Walters v. Staveley Coal and Iron Co. (4 B. W. C. C. 89—decision of C. A.) affirmed . . .	381
Turvin v. Newcome (1856) 3 K. & J. 16; 3 Jur. (N. S.) 203; 5 W. R. 35) followed.		Waltham Holy Cross Urban District Council v. Lea Conservancy Board (1910) 103 L. T. 192; 74 J. P. 253; 26 T. L. R. 483; 8 L. G. R. 579) followed	
<i>In re Stamford and Warrington (Earl)</i> ; <i>Payne v. Grey</i> . . .	464	<i>Titterton v. Kingsbury Collieries, Ltd.</i> . . .	562
Tweddle (John) & Co. , <i>In re</i> ([1910] 2 K. B. 67; 102 L. T. 532—decision of Div. Ct.) reversed on latter point . . .	85	Ward v. Royal Exchange Shipping Company ((1887) 58 L. T. 174; 6 Asp. M. L. C. 239) followed.	
" Tweddalsdale ," The (1889) 14 P. D. 164; 58 L. J. Adm. 41; 61 L. T. 371; 37 W. R. 783; 6 Asp. M. L. C. 430) approved.		<i>In re Ind, Coope & Co., Ltd.</i> ; <i>Fisher v. The Company</i> ; <i>Know v. The Company</i> ; <i>Arnold v. The Company</i> . . .	66
<i>The "Grovehurst"</i> . . .	584	Warner v. Couchman ([1911] 1 K. B. 351; 80 L. J. K. B. 526; 103 L. T. 693; 27 T. L. R. 121; 55 Sol. Jo. 107; 4 B. W. C. C. 32—decision of C. A.) . . .	386
Tyrell's Estate , <i>In re</i> ([1907] 1 I. R. 292) applied.		Watson v. Ambergate, etc. Railway ((1850) 15 Jur. 448) discussed.	
<i>In re Earl of Donoughmore's Estate</i> . . .	465	<i>Chaplin v. Hicks</i> . . .	151
V.		Wedderburn v. Lauderdale (Earl) ([1908] S. C. 1237; 45 Sc. L. R. 949—decision of Ct. of Sess.) reversed . . .	545
Varlo v. Faden (1859) 27 Beav. 265) followed.		Weir v. Richardson ((1897) 3 Com. Cas. 20) followed.	
<i>In re Hurlbatt</i> ; <i>Hurlbatt v. Hurlbatt</i> . . .	464	<i>The "Kingsland"</i> . . .	577
Vawdry v. Geddes (1830) 1 Russ. & My. 203; Tambl. 361; 8 L. J. (O. S.) Ch. 63; 32 R. R. 196) distinguished.		West v. Gwynne ([1911] W. N. 35; 104 L. T. 277; 27 T. L. R. 237; 55 Sol. Jo. 254—decision of Joyce, J.) affirmed . . .	321
<i>In re Lord Nunburnholme, Wilson v. Nunburnholme</i> . . .	665	West v. West (27 T. L. R. 189—decision of Darling, J.) affirmed . . .	204
Victor v. Victor (28 T. L. R. 131—decision of Darling, J.) reversed . . .	269	" West Cock ," The ([1911] P. 23; 27 T. L. R. 52—decision of Evans, Pres.) affirmed . . .	592
Vimbos, Ltd. , <i>In re</i> ([1900] 1 Ch. 470; 69 L. J. Ch. 209; 82 L. T. 597; 48 W. R. 520) followed.		West Ham Union v. Holbeach Union ([1905] A. C. 450; 74 L. J. K. B. 868; 93 L. T. 557; 69 J. P. 442; 21 T. L. R. 713; 54 W. R. 137; 3 L. G. R. 1179) followed.	
<i>Deyes v. Wood</i> . . .	79	<i>Kingston-upon-Hull Incorporation for the Poor v. Hackney Union</i> . . .	472
Virginia Carolina Chemical Co. v. Norfolk and North American Steam Shipping Co. (28 T. L. R. 16; 56 Sol. Jo. 16—decision of Bray, J.) affirmed . . .	573	West Ham v. London County Council ([1893] A. C. 562) discussed.	
Vron Colliery Co. , <i>In re</i> (1882) 20 Ch. D. 442; 51 L. J. Ch. 389; 30 W. R. 388—C. A.) distinguished.		<i>West Kent Main Sewerage Board v. Dartford Union Assessment Committee</i> . . .	519
<i>Armroduct Manufacturing Co., Ltd. v. General Incandescent Co., Ltd.</i> . . .	206	West Kent Main Sewerage Board v. Dartford Union Assessment Committee (74 J. P. 129; 8 L. G. R. 287—decision of C. A.) affirmed . . .	519
W.			
Walker v. Jones (1866) L. R. 1 C. P. 50; 35 L. J. P. C. 30; 14 L. T. 656; 14 W. R. 484; 12 Jur. (N. S.) 381) followed.			
<i>Rourke v. Robinson</i> . . .	434		
Waller v. Barrett (1857) 24 Beav. 413; 27 L. J. Ch. 214; 4 Jur. (N. S.) 128) applied.			
<i>In re Lawley</i> ; <i>Jackson v. Leighton</i> . . .	213		

LIST OF CASES AFFIRMED, REVERSED, ETC.

	COL.		COL.
West Riding of Yorkshire Rivers Board v. Gaunt (Reuben) & Sons, Ltd. ((1902) 67 J. P. 183; 19 T. L. R. 140; 1 L. G. R. 133) cited.		Wilson v. Connolly (103 L. T. 461; 27 T. L. R. 7—decision of Div. Ct.) affirmed	239
<i>Attorney-General v. Lewes Corporation.</i>	643	Wilson v. Duguid (1883) 24 Ch. D. 244; 53 L. J. Ch. 52; 49 L. T. 124; 31 W. R. 945) applied.	
West Riding of Yorkshire Rivers Board v. Preston ((1904) 92 L. T. 21; 69 J. P. 1; 3 L. G. R. 289) cited.		<i>In re Walford; Kenyon v. Walford</i>	477
<i>Attorney-General v. Lewes Corporation.</i>	643	Wilson v. Walton and Counties Permanent Investment Building Society ((1903) 19 T. L. R. 408) followed on this point.	
Westminster Corporation v. St. George's, Hanover Square, Rector and Churchwardens ([1910] A. C. 225; 79 L. J. Ch. 310; 102 L. T. 290; 74 J. P. 153; 26 T. L. R. 327; 54 Sol. Jo. 325; 8 L. G. R. 337) cited.		<i>In re Metropolis and Counties Permanent Investment Building Society, Gutfield's Case</i>	48
<i>In re Hyde Park Place Charity</i>	52	Wimbledon Olympia, Ltd., In re ([1910] 1 Ch. 630; 79 L. J. Ch. 481; 102 L. T. 425; 17 Manson, 220) followed.	
White v. Stafford & Co. ([1901] 2 K. B. 241; 70 L. J. K. B. 658; 84 L. T. 574—C. A.) followed.		<i>In re South of England Natural Gas and Petroleum Co., Ltd.</i>	78
<i>Huntley Brothers v. Owners of Backworth Collieries</i>	176	Wimborne and Browne's Contract, In re ([1904] 1 Ch. 537; 73 L. J. Ch. 270; 90 L. T. 540; 52 W. R. 334) distinguished.	
White, Son & Pill v. Stennings ([1911] W. N. 68; 80 L. J. K. B. 499; 55 Sol. Jo. 365—decision of Div. Ct.) reversed	110	<i>In re Collis's Estate</i>	560
Whiteman v. Sadler ([1910] 1 K. B. 868; 79 L. J. K. B. 786; 102 L. T. 472; 26 T. L. R. 372; 54 Sol. Jo. 375—decision of C. A.) reversed	426	Winn v. Bull ((1877) 7 Ch. D. 29; 47 L. J. Ch. 139; 26 W. R. 230) followed.	
Whiteman v. Sadler ([1910] A. C. 514; 79 L. J. K. B. 1050; 103 L. T. 296; 26 T. L. R. 655; 54 Sol. Jo. 718; 17 Mans. 296) distinguished.		<i>Hatzfeldt v. Alexander</i>	542
<i>Whiteman v. Director of Public Prosecutions</i>	428	Wolfenden v. McCulloch ((1905) 92 L. T. 857) followed.	
Whittington v. Seale-Hayne ((1900) 16 T. L. R. 181) considered.		<i>O'Driscoll v. Dolan</i>	227
<i>Milch v. Coburn</i>	313	Woodall, In re ((1884) 13 Q. B. D. 479—dictum of Cotton, L.J.) approved.	
Wiener v. Wilsons and Furness-Leyland Line, Ltd. (102 L. T. 716; 54 Sol. Jo. 543—decision of Hamilton, J.) affirmed	574	<i>In re Bagley</i>	36
Wilkes v. Spooner (104 L. T. 140; 27 T. L. R. 157—decision of Scrutton, J.) reversed	316	Woodbridge & Sons v. Bellamy ([1910] W. N. 269; 55 Sol. Jo. 126—decision of Eve, J.) reversed	600
Williams v. Hathaway ((1877) 6 Ch. D. 544) distinguished.		Wright v. Kerrigan ([1911] 2 I. R. 301; 45 I. L. T. 82; 4 B. W. C. C. 432—C. A.) disapproved.	
<i>Watling v. Lewis</i>	156	<i>Amys v. Barton</i>	387, 390
Willmott v. London Road Car Co., Ltd. ([1901] 1 Ch. 754; 79 L. J. Ch. 431; 102 L. T. 427; 26 T. L. R. 387; 17 Manson, 217—decision of Neville, J.) reversed	106, 320		
Willoughby, In re; Willoughby v. Decies (104 L. T. 536—decision of Parker, J.) affirmed	662		

Y.

Yates and Others v. Kyffin-Taylor and Wark ([1889] W. N. 141) disapproved.	
<i>In the Estate of Crippen</i>	204
Yeatman v. Yeatman ((1869) L. R. 1 P. & D. 489; 39 L. J. P. & M. 37; 18 L. T. 415; 16 W. R. 734) overruled.	
<i>Sanders v. Sanders</i>	270
Yorkshire Railway Wagon Co. v. Maclure ((1881) 19 Ch. D. 489; 45 L. T. 751; 51 L. J. Ch. 259; 30 W. R. 291) followed.	
<i>Wauthier v. Wilson</i>	246

CHRONOLOGICAL LIST OF STATUTES REFERRED TO IN CASES DIGESTED IN THIS VOLUME.

A.—IMPERIAL STATUTES.

	COL.		COL.
1 & 2 Ph. & Mar. c. 12 (<i>Impounding of Distresses</i> , 1554), s. 1. COAKER v. WILLCOCKS . . .	13, 14	9 Geo. 3, c. xlv. (<i>Taunton Town and Market Regulation Act</i> , 1768). WAKE v. DYER . . .	354, 355
13 Eliz. c. 5 (<i>Fraudulent Conveyances Act</i> , 1571). CARRUTHERS v. PEAKE . . . GONVILLE'S TRUSTEE v. PATENT CARAMEL CO., LD. . .	560 232, 233	14 Geo. 3, c. 48 (<i>Life Assurance Act</i> , 1774). EVANSON v. CROOKS . . .	292
21 Jac. 1, c. 16 (<i>Statute of Limitations</i> , 1623). <i>In re</i> CROYDON; HINCKS v. ROBERTS GREGORY v. TORQUAY CORPORATION <i>In re</i> ROBINSON; MACLAREN v. PUBLIC TRUSTEE . . .	329 326, 327, 501 328, 329	30 Geo. 3, c. 5 (<i>Land Tax Act</i> , 1797), ss. 4, 17. CENTRAL LONDON RY. v. CITY OF LONDON LAND TAX COMMISSIONERS . . .	311, 312
29 Car. 2, c. 3 (<i>Statute of Frauds</i> , 1677), s. 4. HANAU v. EHRLICH . . . PRESTED MINERS GAS INDICATING ELECTRIC LAMP CO., LD. v. HENRY GARNER, LD. . .	101 538	32 Geo. 3, c. 56 (<i>Servants' Characters Act</i> , 1792), ss. 23. R. v. COSTELLO AND BISHOP, <i>sub nom.</i> R. v. CONOLLY AND COSTELLO .	132
8 & 9 Will. 3, c. 11 (<i>Frivolous and Vexatious Suits</i> , 1696—7), s. 8. COPE v. BENNETT, HARRIS THIRD PARTY (No. 1) . . .	41, 208	39 & 40 Geo. 3, c. 94 (<i>Criminal Lunatics Act</i> , 1800), s. 2. R. v. GOVERNOR OF H.M. PRISON AT STAFFORD; <i>Ex parte</i> EMERY .	119, 120
6 Anne, c. 7 (<i>Scots Act reproduced as the Articles in the Union with Scotland Act</i> , 1706). LORD ADVOCATE v. WALKER TRUSTEES . . .	545, 546	39 & 40 Geo. 3, c. 98 (<i>Accumulations Act</i> , 1798 (<i>Thellusson Act</i>)), ss. 1, 2. <i>In re</i> HURLEATT; HURLEATT v. HURLEATT . . .	463, 464
6 Anne, c. 11 (<i>Union with Scotland Act</i> , 1706). LORD ADVOCATE v. WALKER TRUSTEES . . .	545, 546	42 Geo. 3, c. 116 (<i>Land Tax Redemption Act</i> , 1802), ss. 8, 38. CENTRAL LONDON RY. v. CITY OF LONDON LAND TAX COMMISSIONERS .	311, 312
9 Geo. 2, c. 36 (<i>Charitable Uses Act</i> , 1736). <i>In re</i> HOYLES; ROW v. JAGG. . .	55, 92	46 Geo. 3, c. 148 (<i>Lotteries Act</i> , 1806), s. 59. MUNRO v. KELLY . . .	239, 240
12 Geo. 2, c. 26 (<i>Plate (Offences) Act</i> , 1738), ss. 2, 6. FABERGÉ v. GOLDSMITHS' CO. . .	527, 528	57 Geo. 3, c. 93 (<i>Distress (Costs) Act</i> , 1817), s. 1, Sched. WALKER v. RETTER . . .	180
17 Geo. 2, c. 38 (<i>Poor Relief Act</i> , 1743), s. 4. LONDON COUNTY COUNCIL v. SHORE- DITCH BOROUGH COUNCIL . . .	513	s. 2. R. v. DALY; <i>Ex parte</i> NEWSON .	180, 181, 347, 348
28 Geo. 2, c. 123 (<i>Southwark Borough Market Act</i> , 1754), s. 4. HAYNES v. FORD . . .	354	57 Geo. 3, c. xxix. (<i>Metropolitan Paving Act</i> (<i>Michael Angelo Taylor's Act</i>) 1817), s. 80. GREEN v. HACKNEY CORPORATION .	415
30 Geo. 2, c. 31 (<i>Southwark Borough Market Act</i> , 1756), s. 10. HAYNES v. FORD . . .	354	59 Geo. 3, c. 12 (<i>Poor Relief Act</i> , 1819), s. 7. COSFORD UNION AND HITCHAM PARISH COUNCIL v. POOR LAW AND LOCAL GOVERNMENT OFFICERS' MUTUAL GUARANTEE ASSOCIA- TION, LD. . .	441

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
3 Geo. 4, c. 126 (<i>Turnpike Roads Act</i> , 1822), ss. 118, 124. COPESTAKE v. WEST SUSSEX COUNTY COUNCIL	252, 253	6 & 7 Will. 4, c. 37 (<i>Bread Act</i> , 1836), s. 7. TURNER v. HOLDER	231
4 Geo. 4, c. 60 (<i>Lotteries Act</i> , 1823), ss. 41, 62, 67. HAWKE v. E. HULTON & Co., LD.	106, 243	6 & 7 Will. 4, c. 38 (<i>Licensing (Ireland) Act</i> , 1836), s. 8. R. (REGAN) v. JUSTICES OF MONAGHAN	348
5 Geo. 4, c. 83 (<i>Vagrancy Act</i> , 1824), ss. 3, 4. PALLIN v. BUCKLAND	473	7 Will. 4 & 1 Vict. c. 26 (<i>Wills Act</i> , 1837), s. 15. KEARNEY v. KEARNEY	651
s. 4. MORAN v. JONES	138	s. 27. <i>In re</i> SEABROOK; GRAY v. BADDELEY	474
7 Geo. 4, c. xxx. (<i>Macclesfield Canal Act</i> , 1826), ss. 19, 156. MACCLESFIELD CORPORATION v. GREAT CENTRAL RY. CO.	256, 257	s. 29. WELDON v. WELDON	667
9 Geo. 4, c. 69 (<i>Night Poaching Act</i> , 1828), ss. 1, 2. R. v. McLAUCHLAN	238	s. 33. <i>In re</i> GRESLEY'S SETTLEMENT; WILLOUGHBY v. DRUMMOND	662, 663
1 & 2 Will. 4, c. 32 (<i>Game Act</i> , 1831), s. 27. COOK v. TREVENER	237	<i>In re</i> GRIFFITH'S SETTLEMENT; GRIFFITHS v. WAGHORNE	663, 664
s. 30. PRATT v. MARTIN	237	1 & 2 Vict. c. 110 (<i>Judgments Act</i> , 1838), ss. 17, 18. ASHOVER FLUOR SPAR MINES, LD. v. JACKSON	151
2 & 3 Will. 4, c. 45 (<i>Representation of the People Act</i> , 1832), s. 24. DOUGLAS v. SANDERSON; POTTS v. SANDERSON	197	2 & 3 Vict. c. 47 (<i>Metropolitan Police Act</i> , 1839), s. 52. DESPARD v. WILCOX	129, 130
3 & 4 Will. 4, c. 15 (<i>Dramatic Copyright Act</i> , 1833). ROBL v. PALACE THEATRE, LD.	103	2 & 3 Vict. c. 71 (<i>Metropolitan Police Courts Act</i> , 1839), s. 40. RANSON v. PLATT	21
s. 2. GLENVILLE v. SELIG POLYSCOPE CO.	103	3 & 4 Vict. c. 108 (<i>Municipal Corporations (Ireland) Act</i> , 1840), ss. 83, 92. R. (SISK) v. DONOVAN	336
3 & 4 Will. 4, c. 27 (<i>Real Property Limitation Act</i> , 1833), ss. 2, 40. <i>In re</i> LLOYD; WATERS v. LLOYD	328	3 & 4 Vict. c. xliii. (<i>Taunton Town and Market Supplemental Act</i> , 1840), s. 17. WAKE v. DYER	354, 355
s. 3. KYNOCHE, LD. v. ROWLANDS	327, 328	4 & 5 Vict. c. 38 (<i>School Sites Act</i> , 1841). ATTORNEY-GENERAL (GLAMORGAN COUNTY COUNCIL) v. PRICE	52, 53
3 & 4 Will. 4, c. 30 (<i>Poor Rate Exemptions Act</i> , 1833), s. 1. WALTON-LE-DALE URBAN DISTRICT COUNCIL v. GREENWOOD	258	5 & 6 Vict. c. 35 (<i>Income Tax Act</i> , 1842), s. 41. CROOKSTON BROTHERS v. INLAND REVENUE	279
3 & 4 Will. 4, c. 42 (<i>Civil Procedure Act</i> , 1833), s. 3. SHAW v. CROMPTON	327	s. 61, No. vi., Sched. A. R. v. SPECIAL COMMISSIONERS OF INCOME TAX; <i>Ex parte</i> ESSEX HALL	281
3 & 4 Will. 4, c. xlv. (<i>Taunton Town and Market Regulation Act</i> , 1833), s. 20. WAKE v. DYER	354, 355	s. 100. SMITH v. LION BREWERY CO., LD.	280
4 & 5 Will. 4, c. 76 (<i>Poor Law Amendment Act</i> , 1834), s. 71. JONES v. MERTHYR TYDFIL UNION	470	s. 100, Sched. D. SMITH v. LION BREWERY CO., LD.	302
5 & 6 Will. 4, c. 41 (<i>Gaming Act</i> , 1835), s. 1. WILSON v. CONOLLY	238, 239	FARMER v. SCOTTISH NORTH AMERICAN TRUST	231
5 & 6 Will. 4, c. 62 (<i>Statutory Declarations Act</i> , 1835). ROGERS, EUNGELUT & Co. v. MARTIN	180	Sched. D. LIVERPOOL, LONDON, AND GLOBE INSURANCE CO. v. BENNETT; BRICE v. OCEAN ACCIDENT AND GUARANTEE CORPORATION, LD.; BRICE v. NORTHERN ASSURANCE CO.	278

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

COL.	COL.
5 & 6 Vict. c. 47 (<i>Customs Act</i> , 1842), s. 59. FABERGÉ v. GOLDSMITHS' CO. 527, 528	8 & 9 Vict. c. 112 (<i>Satisfied Terms Act</i> , 1845), s. 2. <i>In re</i> MOORE AND HULME'S CON- TRACT 432, 433
6 & 7 Vict. c. 18 (<i>Parliamentary Voters Registration Act</i> , 1843), s. 65. ASTELL v. BARRETT 195, 196	9 & 10 Vict. c. 66 (<i>Poor Removal Act</i> , 1846), s. 1. GUARDIANS OF BRAINTREE UNION v. GUARDIANS OF ROCHFORD UNION 472, 473
6 & 7 Vict. c. 68 (<i>Theatres Act</i> , 1843), s. 2. ROYAL ALBERT HALL v. LONDON COUNTY COUNCIL 616, 617	ss. 1, 3. KINGSTON-UPON-HULL INCORPORA- TION FOR THE POOR v. HACKNEY UNION 471, 472
6 & 7 Vict. c. 73 (<i>Solicitors Act</i> , 1843), s. 37. BROWNE v. BLACK 597 <i>In re</i> RICHARDS, <i>sub nom. In re R.</i> , A SOLICITOR 597 <i>In re</i> STEAD 599	10 & 11 Vict. c. 14 (<i>Markets and Fairs Clauses Act</i> , 1847), s. 13. JENKINS v. THOMAS 355
7 & 8 Vict. c. 37 (<i>School Sites Act</i> , 1844). ATTORNEY-GENERAL (GLAMORGAN COUNTY COUNCIL) v. PRICE 52, 53	10 & 11 Vict. c. 15 (<i>Gasworks Clauses Act</i> , 1847), ss. 6, 7. SCHWEDER v. WORTHING GASLIGHT AND COKE CO. 244
7 & 8 Vict. c. 101 (<i>Poor Law Amendment Act</i> , 1844), ss. 5, 7. JONES v. MERTHYR TYDFIL UNION 470	s. 8. REDHILL GAS CO. v. REIGATE RURAL DISTRICT COUNCIL 257
s. 61. COSFORD UNION AND HITCHAM PARISH COUNCIL v. POOR LAW AND LOCAL GOVERNMENT OFFICERS' MUTUAL GUARANTEE ASSOCIATION, LD. 471	s. 18. FALKIRK CORPORATION v. RUSSELL 244
8 & 9 Vict. c. 18 (<i>Lands Clauses Consolida- tion Act</i> , 1845), ss. 18, 68, 84, 85, 124. COOKE v. LONDON COUNTY COUN- CIL 90	10 & 11 Vict. c. 17 (<i>Waterworks Clauses Act</i> , 1847). TICEHURST AND DISTRICT WATER AND GAS CO., LD. v. GAS WATER- WORKS SUPPLY AND CONSTRUCTION CO., LD. 648
s. 34. FISHER v. GREAT WESTERN RY. CO. 89, 90	ss. 3, 72. METROPOLITAN WATER BOARD v. BROOKS 416, 417
8 & 9 Vict. c. 20 (<i>Railways Clauses Consoli- dation Act</i> , 1845), s. 77. CALEDONIAN RY. CO. v. GLENEORG UNION FIRECLAY CO. 421	ss. 28, 44, 48—52. PARNELL v. PORTSMOUTH WATER- WORKS CO. 647, 648
ss. 77, 78. EARL OF CARLISLE (EXECUTRIX OF) v. NORTHUMBERLAND COUNTY COUNCIL 89, 90	s. 75. WEYMOUTH WATERWORKS CO. v. COODE AND HASELL 646, 647
ss. 77—85. LONDON AND NORTH WESTERN RY. CO. v. HOWLEY PARK COAL AND CANNEL CO. 506	11 & 12 Vict. c. 42 (<i>Indictable Offences Act</i> , 1848), s. 17. R. v. BROS; <i>Ex parte</i> HARDY 348
ss. 98, 99. GENERAL ELECTRIC CO., LD. v. EVANS 509, 510	s. 18. R. v. HERTFORDSHIRE JUSTICES 344, 345
8 & 9 Vict. c. 33 (<i>Railways Clauses Consoli- dation (Scotland) Act</i> , 1845), s. 70. CALEDONIAN RY. CO. v. GLENBOIG UNION FIRECLAY CO. 421	11 & 12 Vict. c. 43 (<i>Summary Jurisdiction Act</i> , 1848), s. 1. R. v. GARRETT-PEGGE; <i>Ex parte</i> BROWN 349
SYMINGTON v. CALEDONIAN RY. CO. 421	R. v. LILLEY; <i>Ex parte</i> TAYLOR 349, 350
s. 71. CALEDONIAN RY. CO. v. SYMINGTON 421	s. 11. MACKIE v. FOX 231, 235
8 & 9 Vict. c. 109 (<i>Gaming Act</i> , 1845). MUNRO v. KELLY 240	s. 13. MAY v. BEELEY 350, 351
<i>In re</i> O'SHEA; <i>Ex parte</i> LAN- CASTER 32, 33	R. v. THOMSON 347
s. 18. RICHARDS v. STARCK 239	ss. 13, 14. R. v. MONTGOMERY AND OTHERS (JUSTICES); <i>Ex parte</i> LONG 346
WILSON v. CONOLLY 238, 239	s. 25. R. v. MARTIN; <i>Ex parte</i> SMYTHE 345, 346

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
11 & 12 Vict. c. 111 (<i>Poor Removal Act</i> , 1848), s. 1. GUARDIANS OF BRAINTREE UNION v. GUARDIANS OF ROCHFORD UNION 472, 473 KINGSTON-UPON-HULL INCORPORATION FOR THE POOR v. HACKNEY UNION 471, 472		17 & 18 Vict. c. 31 (<i>Railway and Canal Traffic Act</i> , 1854), s. 2. SPILLERS AND BAKERS, LD. v. GREAT WESTERN RY. CO. (ASSOCIATION OF PRIVATE OWNERS OF RAILWAY ROLLING STOCK, INTER- VENERS) 507 LONDON AND NORTH WESTERN RY. CO. v. SOUTH EASTERN RY. CO. . . 509	
12 & 13 Vict. c. 45 (<i>Quarter Sessions Act</i> , 1849), s. 6. <i>Ex parte</i> JOY 352		s. 7. JENKINS v. GREAT CENTRAL RY. CO. 50, 51	
12 & 13 Vict. c. 53 (<i>Attorneys and Solicitors (Ireland) Act</i> , 1849), s. 2. <i>In re</i> SEALY 600		18 & 19 Vict. c. 120 (<i>Metropolis Local Management Act</i> , 1855), ss. 73, 74, 78, 250. HOUSE PROPERTY AND INVESTMENT CO. v. GRICE 412, 413	
12 & 13 Vict. c. 92 (<i>Cruelty to Animals Act</i> , 1849). R. v. RAWSON. <i>sub nom.</i> R. v. TRAFFORD-LAWSON AND OTHERS (JUSTICES) 351		s. 105. WANDSWORTH BOROUGH COUNCIL v. GOLDS 414, 415	
s. 2. POTTER v. CHALLANS 12		s. 135. LONDON COUNTY COUNCIL v. PRICE'S CANDLE CO., LD. . . . 413	
13 & 14 Vict. c. 57 (<i>Vestries Act</i> , 1850), ss. 7, 8. R. v. DAVIES, <i>sub nom.</i> R. v. DAVIES; <i>Ex parte</i> PEAKE 336		18 & 19 Vict. c. cxxxiii. (<i>Weymouth Water- works Act</i> , 1855). WEYMOUTH WATERWORKS CO. v. COODE AND HASELL 646, 647	
14 & 15 Vict. c. 92 (<i>Summary Jurisdiction (Ireland) Act</i> , 1851), s. 13 (3). R. (KENNEDY) v. COUNTY CORK JUSTICES 348		19 & 20 Vict. c. 97 (<i>Mercantile Law Amend- ment Act</i> , 1856), s. 5. DALE v. POWELL; POWELL v. DALE AND HOOD 452, 453	
14 & 15 Vict. c. 100 (<i>Criminal Procedure Act</i> , 1851), s. 9. R. v. WHITE 137		19 & 90 Vict. c. 113 (<i>Foreign Tribunals Evidence Act</i> , 1856), s. 5. ECCLES & CO. v. LOUISVILLE AND NASHVILLE RAILROAD CO. . . . 204	
ss. 12, 24. R. v. GARLAND AND ANOTHER . . 136		20 & 21 Vict. c. 43 (<i>Summary Jurisdiction Act</i> , 1857), s. 6. TAYLOR v. WILSON 352	
s. 29. R. v. COSTELLO AND BISHOP. <i>sub nom.</i> R. v. CONOLLY AND COSTELLO 132		20 & 21 Vict. c. 77 (<i>Court of Probate Act</i> , 1857), s. 73. <i>In the Estate of</i> CRIPPEN . . 209, 210 <i>In the Estate of</i> HEERMAN . . 209	
16 & 17 Vict. c. 34 (<i>Income Tax Act</i> , 1853), s. 2, Sched. D. AMERICAN THREAD CO. v. JOYCE . 280		ss. 73, 81. <i>In the Estate of</i> WOOLLEY . . 210	
ss. 2, 5, Sched. D. CROOKSTON BROTHERS v. INLAND REVENUE 279		s. 83. COPE v. BENNETT 208	
s. 40. POOLE CORPORATION v. BOURNE- MOUTH CORPORATION 282		20 & 21 Vict. c. 85 (<i>Matrimonial Causes Act</i> , 1857), s. 26. BURDETT v. HORNE 266, 267	
Sched. D. BROWN v. BURT 278		s. 27. STEVENSON v. STEVENSON . . . 271	
16 & 17 Vict. c. 119 (<i>Betting Act</i> , 1853), ss. 1, 3. MAGUIRE v. QUINN 243 R. v. MORTIMER 240		s. 31. BULLOCK v. BULLOCK 272 PRETTY v. PRETTY (King's Proctor showing Cause) 272	
s. 11. M'LAUCHLAN v. RENTON . . 241, 242		21 & 22 Vict. c. 95 (<i>Court of Probate Act</i> , 1858), s. 3. COPE v. BENNETT 208	
16 & 17 Vict. c. clxvi. (<i>East London Water- works Act</i> , 1853), s. 81. METROPOLITAN WATER BOARD v. BROOKS 416			

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

COL.	COL.
21 & 22 Vict. c. 104 (<i>Metropolis Management Amendment Act</i> , 1858), ss. 1, 2, 24. LONDON COUNTY COUNCIL v. PRICE'S CANDLE CO., LD. 413	25 & 26 Vict. c. 68 (<i>Fine Arts Copyright Act</i> , 1862). BOWDEN BROTHERS v. AMALGAMATED PICTORIALS, LD. 104 s. 1. SMITH BROTHERS, WHITEHAVEN v. REDFEARN 103 ss. 1, 4. WHITEHEAD v. WELLINGTON 105 ss. 7, 8. CARLTON ILLUSTRATORS v. COLEMAN & CO. 104
21 & 22 Vict. c. xcii. (<i>Mersey Docks and Harbour Board (Consolidation) Act</i> , 1858), ss. 64, 80, 82. YOUNG & CO. v. LIVERPOOL ASSESSMENT COMMITTEE 518	25 & 26 Vict. c. 89 (<i>Companies Act</i> , 1862), s. 12. KOFFYFONTEIN MINES, LD. v. MOSELY 62
22 & 23 Vict. c. 35 (<i>Law of Property Amendment Act</i> , 1859), s. 27. <i>In re</i> LAWLEY; JACKSON v. LEIGHTON 213	25 & 26 Vict. c. 102 (<i>Metropolis Management Amendment Act</i> , 1862), s. 75. FLEMING v. LONDON COUNTY COUNCIL; METROPOLITAN RY. CO. v. LONDON COUNTY COUNCIL 408 s. 77. WANDSWORTH BOROUGH COUNCIL v. GOLDS 414, 415
22 & 23 Vict. c. 61 (<i>Matrimonial Causes Act</i> , 1859), s. 5. CLARKE v. CLARKE AND LINDSAY . 274	25 & 26 Vict. c. 114 (<i>Poaching Prevention Act</i> , 1862), s. 2. STOWE v. MARJORAM, <i>sub nom.</i> STONE v. MARJORAM 237
23 & 24 Vict. c. 38 (<i>Law of Property Amendment Act</i> , 1860), s. 13. <i>In the Estate of</i> GOMPERTZ; PARKEN v. GOMPERTZ 208	26 & 27 Vict. c. 92 (<i>Railways Clauses Act</i> , 1863), s. 31. JENKINS v. GREAT CENTRAL RY. CO. 50, 51 ss. 38, 39, 41, 55. GREAT CENTRAL RY. CO. v. MIDLAND RY. CO. 506, 507
23 & 24 Vict. c. 127 (<i>Solicitors Act</i> , 1860), s. 28. <i>In re</i> COCKRELL'S ESTATE 597, 598	26 & 27 Vict. c. 93 (<i>Waterworks Clauses Act</i> , 1863). TICEHURST AND DISTRICT WATER AND GAS CO. v. GAS AND WATERWORKS SUPPLY AND CONSTRUCTION CO., LD. 648
24 & 25 Vict. c. 55 (<i>Poor Removal Act</i> , 1861), s. 3. PARISH OF PADDINGTON v. PARISH OF ST. MATTHEW, BETHNAL GREEN 471	27 & 28 Vict. c. 39 (<i>Union Assessment Committee Amendment Act</i> , 1864), s. 1. MALTON GAS CO. v. MALTON UNION ASSESSMENT COMMITTEE 511
24 & 25 Vict. c. 96 (<i>Larceny Act</i> , 1861), s. 17. R. v. McLAUCHLAN 238 s. 31. R. v. Richards 133, 134 s. 88. R. v. O'BRIEN 135, 136 s. 91. R. v. GARLAND AND ANOTHER 136	27 & 28 Vict. c. 47 (<i>Penal Servitude Act</i> , 1864), s. 9. R. v. SMITH; R. v. WILSON 140, 141
24 & 25 Vict. c. 98 (<i>Forgery Act</i> , 1861), s. 24. R. v. HOLDEN 133 s. 38. R. v. HUTCHINSON 133	27 & 28 Vict. c. cccxx. (<i>Manchester, Sheffield, and Lincolnshire Railway (Steamboats) Act</i> , 1864), s. 2. JENKINS v. GREAT CENTRAL RY. CO. 50, 51
24 & 25 Vict. c. 100 (<i>Offences Against the Person Act</i> , 1861), ss. 11—15. R. v. WHITE 137 s. 16. R. v. SYME 128, 129 s. 42. ROSE v. KEMPTHORNE 130 s. 56. R. v. JONES (No. 2) 132	28 & 29 Vict. c. 121 (<i>Salmon Fishery Act</i> , 1865), s. 36. MOSES v. RAYWOOD 224
25 Vict. c. xxx. (<i>Bristol Waterworks Act</i> , 1862), s. 68. BRISTOL GUARDIANS v. BRISTOL WATERWORKS 648	29 & 30 Vict. c. 113 (<i>Poor Law Amendment Act</i> , 1866), s. 17. PARISH OF PADDINGTON v. PARISH OF ST. MATTHEW, BETHNAL GREEN 471

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
30 & 31 Vict. 35 (<i>Criminal Law Amendment Act</i> , 1867), s. 6. R. v. BROS; <i>Ex parte</i> HARDY	348	32 & 33 Vict. c. 67 (<i>Valuation (Metropolitan) Act</i> , 1869), ss. 45, 47. WRIGHTS WORTH v. R.	529
30 & 31 Vict. c. 102 (<i>Representation of the People Act</i> , 1867), ss. 3, 7. CHESTERTON v. GARDOM KENT v. FITTALL (No. 4) SMITH v. NEWMAN	198 194, 195 196	s. 47. LONDON COUNTY COUNCIL v. SHOREDITCH BOROUGH COUNCIL PARRISH v. HACKNEY BOROUGH COUNCIL R. v. SHOREDITCH ASSESSMENT COMMITTEE; <i>Ex parte</i> MORGAN	513 514 513
s. 4. R. v. ALLEN; <i>Ex parte</i> GRIFFITHS SEARLE v. CLERK OF STAFFORDSHIRE COUNTY COUNCIL	194 193, 194	32 & 33 Vict. c. 68 (<i>Evidence Further Amendment Act</i> , 1869), s. 3. RUCK v. RUCK AND CROFT	273
31 & 32 Vict. c. 48 (<i>Representation of the People Act</i> , 1868), s. 4. DOYLE v. CRAIG	194	32 & 33 Vict. c. 87 (<i>Prevention of Gaming (Scotland) Act</i> , 1869), s. 3. WOODS v. LINDSAY	242
31 & 32 Vict. c. 71 (<i>County Courts Admiralty Jurisdiction Act</i> , 1868), ss. 26, 27. THE "GRATIA"	4	32 & 33 Vict. c. 115 (<i>Metropolitan Public Carriage Act</i> , 1869), ss. 6, 7. R. v. COMMISSIONER OF METROPOLITAN POLICE; <i>Ex parte</i> HUMPHREY R. v. COMMISSIONER OF METROPOLITAN POLICE; <i>Ex parte</i> RANDALL	414 414
31 & 32 Vict. c. 119 (<i>Regulation of Railways Act</i> , 1868), s. 16. JENKINS v. GREAT CENTRAL RY. CO. s. 23. ARNOLD v. MORGAN	50, 51 345	ss. 6, 11. R. v. COMMISSIONER OF METROPOLITAN POLICE; <i>Ex parte</i> HOLLOWAY R. v. COMMISSIONER OF METROPOLITAN POLICE; <i>Ex parte</i> PEARCE	413 413, 414
31 & 32 Vict. c. 121 (<i>Pharmacy Act</i> , 1868), s. 15. PHARMACEUTICAL SOCIETY v. NASH ss. 15, 17. PHARMACEUTICAL SOCIETY v. JACKS	405 405, 406	33 & 34 Vict. c. 35 (<i>Apportionment Act</i> , 1870). <i>In re</i> FORD; MILES v. MOLESWORTH	656
31 & 32 Vict. c. 122 (<i>Poor Law Amendment Act</i> , 1868), s. 41. JONES v. MERTHYR TYDFIL UNION	470	33 & 34 Vict. c. 78 (<i>Tramways Act</i> , 1870), s. 43. HARTLEPOOL ELECTRIC TRAMWAYS CO., LD. v. HARTLEPOOL CORPORATION s. 46. R. v. MANCHESTER CORPORATION; <i>Ex parte</i> WISEMAN	629 627
32 & 33 Vict. c. 14 (<i>Customs and Inland Revenue Act</i> , 1869), s. 10. LONDON COUNTY COUNCIL v. HOUNDE s. 19. BRADDELL v. BAKER s. 27. LONDON COUNTY COUNCIL v. FAIRBANK ss. 19 (3), 27. BEDFORD (DUKE) v. LONDON COUNTY COUNCIL	528 528 527 528, 529	34 & 35 Vict. c. 31 (<i>Trade Union Act</i> , 1871), s. 4. BAKER v. INGALL, <i>sub nom.</i> FRIENDLY SOCIETY OF IRON-FOUNDERS OF ENGLAND, IRELAND AND WALES v. INGALL OSBORNE v. AMALGAMATED SOCIETY OF RAILWAY SERVANTS WILKIE v. KING ss. 4, 5. BRITISH ASSOCIATION OF GLASS BOTTLE MANUFACTURERS, LD. v. NETTLEFOLD	620 620, 621 620 618
32 & 33 Vict. c. 41 (<i>Poor Law Assessment and Collection Act</i> , 1869), ss. 7, 19. CHESTERTON v. GARDOM ss. 3, 4, 19. KENT v. FITTALL (No. 4)	198 194, 195	34 & 35 Vict. c. 87 (<i>Sunday Observation Prosecution Act</i> , 1871), ss. 1, 2, Sched. R. v. HALKETT; <i>Ex parte</i> BUTNICK	617
32 & 33 Vict. c. 56 (<i>Endowed Schools Act</i> , 1869), s. 45. WOOD v. PRESTWICH	189		
32 & 33 Vict. c. 62 (<i>Debtors Act</i> , 1869). HAYDON v. HAYDON	37		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
34 & 35 Vict. c. 112 (<i>Prevention of Crimes Act, 1871</i>), s. 7.		37 & 38 Vict. c. 57 (<i>Real Property Limitation Act, 1874</i>), s. 7.	
R. v. PAVITT	127	In re METROPOLIS AND COUNTIES PERMANENT BUILDING SOCIETY; GATFIELD'S CASE	47, 48
s. 18.			
MARTIN v. WHITE	609, 610	38 & 39 Vict. c. 24 (<i>Falsification of Accounts Act, 1875</i>), s. 1.	
s. 19.		R. v. SOLOMONS	133
R. v. ROWLAND	136		
35 & 36 Vict. c. 15 (<i>Parks Regulation Act, 1872</i>).		38 & 39 Vict. c. 55 (<i>Public Health Act, 1875</i>).	
R. v. PLOWDEN	613	JONES v. LLANRWST URBAN DISTRICT COUNCIL	611, 642
35 & 36 Vict. c. 44 (<i>Court of Chancery (Funds) Act, 1872</i> , s. 5.		SHEPHERD v. CROFT	561
In re WILLIAMS'S SETTLED ESTATES	487	ss. 4, 13.	
35 & 36 Vict. c. 65 (<i>Bastardy Laws Amendment Act, 1872</i> , ss. 2, 7.		TITTERTON v. KINGSBURY COLLIERIES, LD.	562, 642, 643
JONES v. MERTHYR TYDFIL UNION	470	ss. 17, 19, 299.	
s. 4.		ATTORNEY-GENERAL v. LEWES CORPORATION	643
R. v. RICHARDSON AND OTHERS.		s. 25.	
JUSTICES; <i>Ex parte</i> SHERRY	275	R. v. BEXHILL CORPORATION; <i>Ex parte</i> CORNELL	339
35 & 36 Vict. c. 93 (<i>Pawnbrokers Act, 1872</i>),		ss. 36, 257.	
s. 10.		BOWER v. CAISTOR RURAL DISTRICT COUNCIL	503, 504
NEWMAN v. OUGHTON; POND AND OUGHTON, CLAIMANTS	461	ss. 36, 257, 266.	
35 & 36 Vict. c. 94 (<i>Licensing Act, 1872</i>),		WILLIS v. ROTHERHAM CORPORATION	502, 503
s. 3.		ss. 42, 45.	
HALES v. BUCKLEY	306, 307	ROBINSON v. BEACONSFIELD RURAL DISTRICT COUNCIL	438, 439
R. v. SOUTH SHIELDS LICENSING JUSTICES; <i>Ex parte</i> MORRISON	302	s. 66.	
STANSFIELD & CO. v. ANDREWS	307, 308	DAWSON v. BINGLEY URBAN DISTRICT COUNCIL	441, 442
ss. 13, 18.		ss. 116, 117.	
TOWNSEND v. ARNOLD	306	BULL v. LORD	230
36 & 37 Vict. c. 66 (<i>Judicature Act, 1873</i>),		SALT v. TOMLINSON	230
s. 25 (5).		ss. 116, 117, 253.	
In re IND, COOPE & CO.; FISHER v. THE COMPANY; KNOX v. THE COMPANY; ARNOLD v. THE COMPANY	433	DODD v. PEARSON	230
s. 47.		s. 148.	
R. v. GOVERNOR OF BRIXTON PRISON; <i>Ex parte</i> SAVARKAR	217	In re EARL OF STAMFORD AND WARRINGTON; PAYNE v. GREY (No. 2)	254
36 & 37 Vict. c. 86 (<i>Elementary Education Act, 1873</i>), s. 24.		s. 150.	
R. v. WALTON; <i>Ex parte</i> DUTTON	191	THOMAS v. HENDON RURAL DISTRICT COUNCIL	260
37 & 38 Vict. c. 12 (<i>East India Annuity Funds Act, 1874</i>).		s. 158.	
KNILL v. DUMERGUE	172, 173	R. v. TYNEMOUTH CORPORATION; <i>Ex parte</i> COWPER	259
37 & 38 Vict. c. 42 (<i>Building Societies Act, 1874</i>), s. 40.		ss. 207, 209, 210, 247.	
In re METROPOLIS AND COUNTIES PERMANENT INVESTMENT BUILDING SOCIETY; GATFIELD'S CASE	47, 48	ATTORNEY-GENERAL v. EAST BARNET VALLEY URBAN DISTRICT COUNCIL	332
37 & 38 Vict. c. 57 (<i>Real Property Limitation Act, 1874</i>), s. 1.		ss. 210, 230.	
KYNOCH, LD. v. ROWLANDS	327, 328	WOLSTANTON UNITED URBAN DISTRICT COUNCIL v. TENSFALL URBAN DISTRICT COUNCIL	335
SHAW v. CROMPTON	327	s. 211 (1).	
ss. 1, 8.		R. v. PROPERT; <i>Ex parte</i> JONES	513
In re LLOYD; WATERS v. LLOYD	328	s. 233.	
		R. v. LOCKE	331, 332

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
38 & 39 Vict. c. 55 (<i>Public Health Act</i> , 1875), Sched. I. (1), (3). R. v. ROWLANDS; <i>Ex parte</i> BEESLEY	336	40 & 41 Vict. c. cxvii. (<i>Crystal Palace Com- pany's Act</i> , 1877). <i>In re</i> CRYSTAL PALACE Co.; FOX v. THE Co.	81
38 & 39 Vict. c. 63 (<i>Sale of Food and Drugs Act</i> , 1875), s. 6. LAMONT v. RODGER	225	41 & 42 Vict. c. 26 (<i>Parliamentary and Municipal Registration Act</i> , 1878), ss. 14, 28 (10), (11). KENT v. FITTALL (No. 4)	194, 195
O'DRISCOLL v. DOLAN	227	s. 28 (2), (10), (11). KENT v. FITTALL (No. 5)	195
RUDD v. SKELTON CO-OPERATIVE SOCIETY, LD.	226	s. 23. AINSWORTH v. CLERK TO CHESHIRE COUNTY COUNCIL	193
ss. 16, 18, 21. AUSTIN v. GUARDIANS OF DUN- SHAUGHLIN UNION	228, 229	s. 28. ASTELL v. BARRETT	195, 196
s. 20. THOMAS, LD. v. HOUGHTON	225		
s. 21. GORDON v. LOVE	226, 227		
38 & 39 Vict. c. 87 (<i>Land Transfer Act</i> , 1875), ss. 22, 24, 28. PANTLIN v. EVANS	520, 521	41 & 42 Vict. c. 31 (<i>Bills of Sale Act</i> , 1878), ss. 3, 4. <i>In re</i> THYNNE; THYNNE v. GREY	39, 552
38 & 39 Vict. c. 90 (<i>Employers and Workmen Act</i> , 1875), s. 3. KEATES v. LEWIS MERTHYR CON- SOLIDATED COLLIERIES, LD.	402, 403	s. 10 (3). HALL v. WHITEMAN	40
39 Vict. c. 16 (<i>Revenue Act</i> , 1876), s. 5. BEDFORD (DUKE) v. LONDON COUNTY COUNCIL	528, 529	41 & 42 Vict. c. 52 (<i>Public Health (Ireland) Act</i> , 1878), s. 201 (1). MUNRO v. MALLOW URBAN DIS- TRICT COUNCIL	334, 335
39 & 40 Vict. c. 44 (<i>Loyal Practitioners (Ireland) Act</i> , 1876), s. 3. <i>In re</i> J., AN ARRANGING DEBTOR	598	41 & 42 Vict. c. 77 (<i>Highways and Locomo- tives Amendment Act</i> , 1878), s. 23. BILLERICAY RURAL COUNCIL v. POPLAR UNION AND KEELING	255
JOHNSTONE v. MCKENZIE	598	COLCHESTER BOROUGH COUNCIL v. GEPP, KING (THIRD PARTY)	255
39 & 40 Vict. c. 61 (<i>Divided Parishes and Poor Law Amendment Act</i> , 1876), s. 19. ASHLEY v. BLAKER	469	42 & 43 Vict. c. 11 (<i>Bankers' Books Evidence Act</i> , 1879), s. 5. R. v. ALBUTT	23
s. 34. GUARDIANS OF BRAINTREE UNION v. GUARDIANS OF ROCHFORD UNION	472, 473	42 & 43 Vict. c. 30 (<i>Sale of Food and Drugs Act Amendment Act</i> , 1879), s. 3. HELLIWELL v. HASKINS	227, 228
ss. 34, 35. KINGSTON-UPON-HULL INCORPORA- TION FOR THE POOR v. HACKNEY UNION	471, 472	LAMONT v. RODGER	225, 228
PARISH OF PADDINGTON v. PARISH OF ST. MATTHEW, BETHNAL GREEN	471	42 & 43 Vict. c. 49 (<i>Summary Jurisdiction Act</i> , 1879), s. 4. HAWKE v. E. HULTON & Co., LD.	243
39 & 40 Vict. c. 79 (<i>Elementary Education Act</i> , 1876), s. 11. SHIERS v. STEVENSON	190, 191	ss. 12, 19. R. v. DICKINSON; <i>Ex parte</i> DAVIS	351, 352
s. 12. R. v. WALTON; <i>Ex parte</i> DUTTON	191	ss. 12, 24, 27. R. v. HERTFORDSHIRE JUSTICES	344
40 & 41 Vict. c. 14 (<i>Evidence Act</i> , 1877). R. v. HALLETT	114, 115	s. 54. R. v. RICHARDSON AND OTHERS, JUSTICES; <i>Ex parte</i> SHERRY	275
40 & 41 Vict. c. 33 (<i>Contingent Remainders Act</i> , 1877). <i>In re</i> SCOTT; SCOTT v. SCOTT	551	43 & 44 Vict. c. 35 (<i>Wild Birds Protection Act</i> , 1880), s. 3. R. v. HOPKINS; <i>Ex parte</i> LOVEJOY	14
40 & 41 Vict. c. 57 (<i>Judicature (Ireland) Act</i> , 1877), s. 27 (5). SHARPLES v. EASON & SON, LD.	482, 483	44 & 45 Vict. c. 12 (<i>Customs and Inland Revenue Act</i> , 1881), s. 38 (2) (a). ATTORNEY-GENERAL v. SECOCMBE	152

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
44 & 45 Vict. c. 41 (<i>Conveyancing and Law of Property Act</i> , 1881), s. 10. <i>In re</i> IND COOPE & Co.; FISHER v. THE COMPANY; KNOX v. THE COMPANY; ARNOLD v. THE COMPANY	133	45 & 46 Vict. c. 50 (<i>Municipal Corporations Act</i> , 1882), ss. 12, 14, 15, 73. FORRESTER v. NORTON	337, 338
s. 14 (2). ROSE v. SPICER; ROSE v. HYMAN	319	45 & 46 Vict. c. 56 (<i>Electric Lighting Act</i> , 1882), s. 10. ATTORNEY-GENERAL v. LEICESTER CORPORATION	199
ss. 19 (1), (2), (3), 24 (2), (6). DEYES v. WOOD	78, 79	ss. 12, 13. ANDREWS v. ABERTILLEY URBAN DISTRICT COUNCIL	199, 200
s. 43. <i>In re</i> ABRAHAM'S; ABRAHAM'S v. BENDON	668, 669	45 & 46 Vict. c. 61 (<i>Bills of Exchange Act</i> , 1882), s. 30. TALBOT v. VON BORIS	38
44 & 45 Vict. c. 69 (<i>Fugitive Offenders Act</i> , 1881). R. v. GOVERNOR OF BRIXTON PRISON; <i>Ex parte</i> SAVARKAR	217	45 & 46 Vict. c. 75 (<i>Married Women's Property Act</i> , 1882), s. 11. BAGLEY v. MAPLE & Co., LD.	268
ss. 2, 10, 35, 39 (1). R. v. GOVERNOR OF BRIXTON PRISON; <i>Ex parte</i> SAVARKAR	217	<i>In re</i> A POLICY OF THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES AND MITCHELL	293
45 & 46 Vict. c. 38 (<i>Settled Land Act</i> , 1882), ss. 2 (5), (7), (10), 58 (i.) (vi.). <i>In re</i> LLEWELLYN; LLEWELLYN v. LLEWELLYN	555	45 & 46 Vict. c. cxxiv. (<i>Great Western Railway (No. 1) Act</i> , 1882), s. 38. ARNOLD v. MORGAN	345
ss. 2 (5), 3, 50, 51. <i>In re</i> BRUEN'S ESTATE	556	46 Vict. c. 3 (<i>Explosive Substances Act</i> , 1883), ss. 2, 7. R. v. BATES	120, 216
ss. 3, 8. <i>In re</i> THYNNE; THYNNE v. GREY	552	46 & 47 Vict. c. 34 (<i>Cheap Trains Act</i> , 1883). LONDON COUNTY COUNCIL AND GREAT EASTERN RY. CO., WOODFORD AND OTHER URBAN DISTRICT COUNCILS INTERVENING	510
s. 21 (ii.). <i>In re</i> EARL OF STAMFORD AND WARRINGTON; PAYNE v. GREY (No. 2)	254	46 & 47 Vict. c. 38 (<i>Trial of Lunatics Act</i> , 1883), s. 2. R. v. IRELAND	142
ss. 21 (10), 50, 53. <i>In re</i> HOPE; TARLETON v. HOPE	556, 557	R. v. MACHARDY	142
s. 25 (xvii.). <i>In re</i> EARL DE LA WARR'S SETTLED ESTATES	549, 550	46 & 47 Vict. c. 52 (<i>Bankruptcy Act</i> , 1883), s. 4 (1) (g). <i>In re</i> BOND; <i>Ex parte</i> CAPITAL AND COUNTIES BANK, LD., <i>sub nom.</i> <i>In re</i> LUTTON; <i>Ex parte</i> LUTTON	27
s. 36. <i>In re</i> YORKE; BARLOW v. YORKE	558	<i>In re</i> A DEBTOR (No. 305 of 1911), <i>sub nom.</i> <i>In re</i> A DEBTOR; <i>Ex parte</i> KITCHEN, AYLAND AND CRADDOCK	26
ss. 39, 45. <i>In re</i> LESLIE'S HASSOP ESTATES, <i>sub nom.</i> <i>In re</i> HASSOP SETTLED ESTATES; <i>In re</i> LESLIE'S WILL	637	<i>In re</i> PERSSE	26
s. 53. <i>In re</i> LACON'S SETTLEMENT; LACON v. LACON	558	<i>In re</i> A DEBTOR (No. 1838 of 1911); <i>sub nom.</i> <i>In re</i> PINCUS AND <i>In re</i> HUTCHINSON & Co.	26
s. 56. <i>In re</i> POPE'S CONTRACT	550	s. 7 (3). <i>In re</i> SUNDERLAND, <i>sub nom.</i> <i>In re</i> SUNDERLAND; <i>Ex parte</i> LEECH AND SIMPKINSON	29
s. 58 (i.), (ii.). <i>In re</i> WALMSLEY	556	ss. 21 (1), (2), (4), 35 (2), 138, 143 (2). <i>In re</i> JONES; <i>Ex parte</i> GOATLY	36
s. 58 (i.), (ix.). <i>In re</i> SUMNER'S SETTLED ESTATES	555	s. 22 (1). <i>In re</i> JONES; <i>Ex parte</i> GOATLY	24, 25
45 & 46 Vict. c. 43 (<i>Bills of Sale (1878) Amendment Act</i> , 1882), ss. 3, 8. <i>In re</i> THYNNE; THYNNE v. GREY	39	ss. 24, 53, 142. <i>In re</i> PICKARD; <i>Ex parte</i> OFFICIAL RECEIVER	25
s. 9. HALL v. WHITEMAN	40		
ROSEFIELD v. PROVINCIAL UNION BANK	39, 40		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
46 & 47 Vict. c. 52 (<i>Bankruptcy Act</i> , 1883), s. 27. <i>In re A DEBTOR</i> (No. 7 of 1910), <i>sub nom.</i> <i>In re A DEBTOR, sub nom.</i> <i>In re A DEBTOR; Ex parte PETITIONING CREDITORS, sub nom.</i> <i>In re A DEBTOR; Ex parte TAYLOR & Co.</i>	175, 176	47 & 48 Vict. c. 68 (<i>Matrimonial Causes Act</i> , 1884), s. 5. <i>PRICE v. PRICE AND BROWN</i>	271, 272
s. 37 (3). <i>In re A DEBTOR</i> (No. 68 of 1911)	27	47 & 48 Vict. c. clii. (<i>Llanfrechfa Upper Local Board Waterworks Act</i> , 1884), ss. 7, 8. <i>HANBURY v. LLANFRECCHFA UPPER URBAN DISTRICT COUNCIL</i>	646
ss. 43, 49. <i>In re ROBINSON'S SETTLEMENT; GANT v. HOBBS</i>	559, 560	48 & 49 Vict. c. 3 (<i>Representation of the People Act</i> , 1884), s. 2. <i>DOYLE v. CRAIG</i>	194
s. 44. <i>In re RICHARDSON; Ex parte GOVERNORS OF ST. THOMAS'S HOSPITAL</i>	34	s. 3. <i>SHORTT v. WRIGHT</i>	198
ss. 44, 54, 168. <i>SALAMAN v. TOD</i>	35	s. 9. <i>CHESTERTON v. GARDOM</i>	198
ss. 44 (2), 50 (5). <i>In re BEHREND'S TRUST; SURMAN v. BIDDELL</i>	35	48 & 49 Vict. c. 69 (<i>Criminal Law Amendment Act</i> , 1885), s. 2. <i>R. v. MACKENZIE; R. v. HIGGINSON</i>	138
ss. 44, 53. <i>In re LUPTON; Ex parte OFFICIAL RECEIVER</i>	34, 35	s. 2 (1). <i>R. v. JONES</i> (No. 3)	138, 139
s. 47 (2). <i>In re MAGNUS; Ex parte SALAMAN</i>	33, 34	s. 5. <i>R. v. CHITSON</i>	118
s. 74 (6). <i>BOARD OF TRADE v. EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LD.</i>	36	48 & 49 Vict. c. 75 (<i>Prevention of Crimes (Amendment) Act</i> , 1885), s. 2. <i>BETTS v. STEVENS</i>	609
s. 89. <i>In re BISCOE; Ex parte OFFICIAL RECEIVER</i>	31, 32	<i>DESPARD v. WILCOX</i>	129, 130
s. 104. <i>In re A DEBTOR</i> (No. 20 of 1910)	30	<i>PANKHURST v. JARVIS</i>	129
ss. 104, 125. <i>In re KITSON; Ex parte T. SUGDEN & SON, LD.</i>	30	48 & 49 Vict. c. xcvi. (<i>Hastings Improvement Act</i> , 1885), s. 198. <i>SLEE v. MEADOWS</i>	333
s. 125 (9). <i>In re BROAD; Ex parte OFFICIAL RECEIVER</i>	213	49 & 50 Vict. c. 54 (<i>Extraordinary Tithe Redemption Act</i> , 1886), s. 5 (4). <i>In re GRAHAM-WIGAN</i>	187, 188
Sched. I., ff. 8, 14, 23. <i>In re THOMAS; Ex parte WARNER</i>	31	50 & 51 Vict. c. 21 (<i>Water Companies (Regulation of Powers) Act</i> , 1887), ss. 3, 4. <i>METROPOLITAN WATER BOARD v. BROOKS</i>	416
46 & 47 Vict. c. 55 (<i>Revenue Act</i> , 1883), s. 10. <i>FABERGÉ v. GOLDSMITHS' CO.</i>	527, 528	s. 4. <i>METROPOLITAN WATER BOARD v. BIBBEY</i>	647
46 & 47 Vict. c. 61 (<i>Agricultural Holdings (England) Act</i> , 1883), s. 61. <i>In re KEDWELL AND FLINT & CO.</i>	10	50 & 51 Vict. c. 28 (<i>Merchandise Marks Act</i> , 1887), s. 5 (1), (2). <i>STONE v. BURN</i>	625, 626
46 & 47 Vict. c. 62 (<i>Agricultural Holdings (Scotland) Act</i> , 1883), s. 36. <i>CATHCART v. CHALMERS</i>	9	50 & 51 Vict. c. 29 (<i>Margarine Act</i> , 1887), s. 6. <i>WILLIAMS v. BAKER</i>	231
47 & 48 Vict. c. 9 (<i>Bankruptcy Appeals (County Courts) Act</i> , 1884), s. 2. <i>In re A DEBTOR</i> (No. 20 of 1910)	20	50 & 51 Vict. c. 55 (<i>Sheriffs Act</i> , 1887), s. 20 (2). <i>MONTAGUE v. DAVIES, BENACHI & CO.</i>	562, 563
47 & 48 Vict. c. 43 (<i>Summary Jurisdiction Act</i> , 1884), ss. 4, 5. <i>R. v. DALY; Ex parte NEWSON</i>	347, 348	50 & 51 Vict. c. 57 (<i>Deeds of Arrangement Act</i> , 1887), ss. 5, 6. <i>In re BAGLEY</i>	28
ss. 4, 5, Sched. <i>R. v. DALY; Ex parte NEWSON</i>	180, 181		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
50 & 51 Vict. c. 58 (<i>Coal Mines Regulation Act</i> , 1887), ss. 20, 49 (r. 30), 50, 51, 65. WATKINS v. NAVAL COLLIERY CO. (1897), LD.	420	51 & 52 Vict. c. 59 (<i>Trustee Act</i> , 1888), s. 8. <i>In re</i> CROYDON; HINCKS v. ROBERTS	329
s. 49. BLACK v. FIFE COAL CO. 400, 419, 420		51 & 52 Vict. c. 65 (<i>Solicitors Act</i> , 1888), s. 13. <i>In re</i> A SOLICITOR: <i>Ex parte</i> THE LAW SOCIETY (No. 25)	602, 603
50 & 51 Vict. c. 71 (<i>Coroners Act</i> , 1887), ss. 4 (2), 5 (3). R. v. MARRIOTT	105, 106	52 & 53 Vict. c. 7 (<i>Customs and Inland Revenue Act</i> , 1889), s. 11 (1). ATTORNEY-GENERAL v. SECCOMBE	152, 153
50 & 51 Vict. c. 72 (<i>Local Authorities (Expenses) Act</i> , 1887), s. 3. ATTORNEY-GENERAL v. EAST BARNET VALLEY URBAN DISTRICT COUNCIL	332	52 & 53 Vict. c. 10 (<i>Commissioners for Oaths Act</i> , 1889), s. 1. <i>In re</i> BAGLEY	28
51 & 52 Vict. c. 8 (<i>Customs and Inland Revenue Act</i> , 1888), s. 4 (3). COLLMAN v. STOKES	526	s. 1 (2), (3). <i>In re</i> BAGLEY	595, 596
COOK v. HOBBS	526	52 & 53 Vict. c. 45 (<i>Factors Act</i> , 1889), s. 2. TURNER v. SAMPSON	6
STRUTT v. CLIFT	526	52 & 53 Vict. c. 49 (<i>Arbitration Act</i> , 1889), s. 4. BLACKWELL (R. W.) & Co., LD. v. DERBY CORPORATION	17
51 & 52 Vict. c. 21 (<i>Law of Distress Amendment Act</i> , 1888), s. 8. WALKER v. RETTER	180	"THE DAWLISH"	574, 575
51 & 52 Vict. c. 25 (<i>Railway and Canal Traffic Act</i> , 1888), s. 25. MANCHESTER SHIP CANAL CO. v. LONDON AND NORTH WESTERN RY. CO.	508, 509	FREEMAN (G.) & SONS v. CHESTER RURAL DISTRICT COUNCIL	17
s. 59, Sched. JENKINS v. GREAT CENTRAL RY. CO.	50, 51	TAYLOR v. WESTERN VALLEYS (MONMOUTHSHIRE) SEWERAGE BOARD	46
51 & 52 Vict. c. 41 (<i>Local Government Act</i> , 1888), s. 24 (2) (f). CALNE UNION v. WILTS COUNTY COUNCIL	469, 470	52 & 53 Vict. s. 63 (<i>Interpretation Act</i> , 1889), s. 2. HAWKE v. E. HULTON & Co., LD.	243
51 & 52 Vict. c. 42 (<i>Mortmain and Charitable Uses Act</i> , 1888). <i>In re</i> SURFLEET'S ESTATE; RAWLINGS v. SMITH	55	53 Vict. c. 8 (<i>Customs and Inland Revenue Act</i> , 1890), s. 30. BOWLES v. ATTORNEY-GENERAL	280
51 & 52 Vict. c. 43 (<i>County Courts Act</i> , 1888), s. 13. MCINALLY v. BLACKLEDGE	108	53 & 54 Vict. c. 5 (<i>Lunacy Act</i> , 1890), s. 123. <i>In re</i> PALMER; THOMAS v. MARSH	343
ss. 41, 43, 118. TOLPUTT (H.) & Co., LD. v. MOLE	107	ss. 283, 287. GLAMORGAN COUNTY ASYLUM (COMMITTEE OF VISITORS) v. CARDIFF GUARDIANS	469
ss. 65, 66, 87. SPRING v. FERNANDEZ	109	53 & 54 Vict. c. 21 (<i>Inland Revenue Regulation Act</i> , 1890), s. 33. ATTORNEY-GENERAL v. EXETER CORPORATION	530
ss. 65, 113, 116. MENTORS, LD. v. WHITE	110	53 & 54 Vict. c. 23 (<i>Chancery of Lancaster Act</i> , 1890), ss. 3, 4, 5. <i>In re</i> CONNOLLY BROTHERS, LD.; WOOD v. CONNOLLY BROTHERS, LD.	112
s. 66. PLASYCOED COLLIERIES CO. v. PARTRIDGE JONES & Co., LD.	108	53 & 54 Vict. c. 39 (<i>Partnership Act</i> , 1890), ss. 31, 44. GARWOOD v. GARWOOD	451, 452
s. 67. ANGEL v. JAY	108	53 & 54 Vict. c. 59 (<i>Public Health Acts Amendment Act</i> , 1890), s. 28. SALT v. TOMLINSON	230
s. 126. DONKIN v. PEARSON	109	53 & 54 Vict. c. 63 (<i>Companies (Winding-up) Act</i> , 1890), s. 8 (2). <i>In re</i> TWIDDLE (JOHN) & Co.	86
51 & 52 Vict. c. 59 (<i>Trustee Act</i> , 1888), s. 4 (1). <i>In re</i> SOLOMON; NORE v. MEYER	635		
Y.D.	[31]		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
53 & 54 Vict. c. 71 (<i>Bankruptcy Act</i> , 1890), ss. 1, 4. <i>In re</i> BAGLEY	25, 36	56 & 57 Vict. c. 53 (<i>Trustee Act</i> , 1893), s. 8 (1). <i>In re</i> SOLOMAN; NORE <i>v.</i> MEYER .	635
s. 5. <i>In re</i> JONES; <i>Ex parte</i> GOATLY .	24, 25	s. 10 (1), (4). <i>In re</i> JOHNSTON; MILLS <i>v.</i> JOHNSTON	632
s. 11. <i>In re</i> ROGERS, <i>sub nom.</i> <i>In re</i> ROGERS; <i>Ex parte</i> SHERIFF OF SUSSEX, <i>sub nom.</i> <i>In re</i> ROGERS; <i>Ex parte</i> OFFICIAL RECEIVER .	29, 30	ss. 10, 25. <i>In re</i> LESLIE HASSOP ESTATES, <i>sub nom.</i> <i>In re</i> HASSOP SETTLED ESTATES; <i>In re</i> LESLIE'S WILL .	637
54 & 55 Vict. c. 30 (<i>Law Agents and Notaries Public (Scotland) Act</i> , 1891), s. 6. PHILIP <i>v.</i> WILSON	598, 599	s. 17 (1), (3). <i>In re</i> SHEPPARD; DE BRIMONT <i>v.</i> HARVEY	632, 633
54 & 55 Vict. c. 39 (<i>Stamp Act</i> , 1891), ss. 91—93, 97. GENFORSIKRINGS AKTIESELSKABET (SKANDINAVIA REINSURANCE CO. OF COPENHAGEN) <i>v.</i> DA COSTA	531, 532	s. 18. <i>In re</i> McEACHARN; GAMBLE <i>v.</i> McEACHARN	559
s. 104. DUKE OF NORTHUMBERLAND <i>v.</i> INLAND REVENUE COMMISSIONERS	533	s. 21 (2). <i>In re</i> GREENWOOD; GREENWOOD <i>v.</i> FIRTH	634
s. 113. ATTORNEY - GENERAL <i>v.</i> CALEDONIAN RY. CO.	530, 531	ss. 26, 33. HOLME <i>v.</i> FIELDSEND	434
Sched. I. DEDDINGTON STEAMSHIP CO. <i>v.</i> INLAND REVENUE COMMISSIONERS	533	s. 42. <i>In re</i> SITWELL	491
EARL OF MOUNT-EDGCUMBE <i>v.</i> INLAND REVENUE COMMISSIONERS	534	56 & 57 Vict. c. 61 (<i>Public Authorities Protection Act</i> , 1893). GREGORY <i>v.</i> TORQUAY CORPORATION	109, 110, 326, 337, 501
55 Vict. c. 4 (<i>Betting and Loans (Infants) Act</i> , 1892), s. 2. DIRECTOR OF PUBLIC PROSECUTIONS <i>v.</i> WITOWSKI	428, 429	s. 1. ATTORNEY-GENERAL <i>v.</i> LEWES CORPORATION	643
55 & 56 Vict. c. 9 (<i>Gaming Act</i> , 1892), s. 1. <i>In re</i> O'SHEA; <i>Ex parte</i> LANCASTER	32, 33	FRY <i>v.</i> CHELTENHAM CORPORATION	500
55 & 56 Vict. c. 13 (<i>Conveyancing and Law of Property Act</i> , 1892), s. 3. WEST <i>v.</i> GWYNNE	321	56 & 57 Vict. c. 71 (<i>Sale of Goods Act</i> , 1893), s. 4. NICHOLLS <i>v.</i> WHITE	537
55 & 56 Vict. c. 57 (<i>Private Street Works Act</i> , 1892), s. 10. NEWQUAY URBAN DISTRICT COUNCIL <i>v.</i> RICKEARD	258	s. 14. JACKSON <i>v.</i> ROTAX MOTOR AND CYCLE CO.	535, 536
s. 13. PONTYPRIDD URBAN DISTRICT COUNCIL <i>v.</i> JONES	258	s. 18 (4) (b). BRADLEY AND COHN, LD. <i>v.</i> RAMSEY & CO.	538
s. 16. WALTON-LE-DALE URBAN DISTRICT COUNCIL <i>v.</i> GREENWOOD	258	s. 23. WHITEHORN BROTHERS <i>v.</i> DAVISON.	422
56 & 57 Vict. c. 39 (<i>Industrial and Provident Societies Act</i> , 1893), s. 25 (1). GRIFFITHS <i>v.</i> ECCLES PROVIDENT INDUSTRIAL CO-OPERATIVE SOCIETY, LD.	284	ss. 28, 32, 34. CLEMENS (E.) HORST CO. <i>v.</i> BIDDELL BROTHERS	538, 572
		ss. 29, 41, 47. POULTON & SON <i>v.</i> ANGLO-AMERICAN OIL CO., LD.	537, 538
		s. 45 (1), (2), (3), (7). MECHAN & SONS, LD. <i>v.</i> NORTH EASTERN RY. CO.	539
		56 & 57 Vict. c. 73 (<i>Local Government Act</i> , 1894). JONES <i>v.</i> LLANRWST URBAN DISTRICT COUNCIL	641, 642
		ss. 5, 17, 81. COSFORD UNION AND HITCHAM PARISH COUNCIL <i>v.</i> POOR LAW AND LOCAL GOVERNMENT OFFICERS' MUTUAL GUARANTEE ASSOCIATION	471

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
56 & 57 Vict. c. 73 (<i>Local Government Act</i> , 1894), s. 25. <i>In re</i> EARL OF STAMFORD AND WARRINGTON; PAYNE <i>v.</i> GREY (No. 2)	254	57 & 58 Vict. c. ccxiii. (<i>London Building Act</i> , 1894), ss. 5, 58 LONDON, GLOUCESTERSHIRE AND NORTH HANTS DAIRY CO. <i>v.</i> MORLEY AND LANCELEY	411, 412
s. 46. GREVILLE-SMITH <i>v.</i> TOMLIN	337	s. 13 (1). LONDON COUNTY COUNCIL <i>v.</i> HUGHES	408, 409
s. 46 (6), (7). <i>R. v.</i> HUNTON; <i>Ex parte</i> HODGSON	337	ss. 22, 27, 216. FLEMING <i>v.</i> LONDON COUNTY COUNCIL; METROPOLITAN RY. CO. <i>v.</i> LONDON COUNTY COUNCIL	408
s. 58. <i>R. v.</i> GODSTONE RURAL DISTRICT COUNCIL	338	ss. 22 (1), 73 (8). PEARS (A. AND F.), LD. <i>v.</i> LONDON COUNTY COUNCIL	409, 410
s. 68. WOLSTANTON UNITED URBAN DISTRICT <i>v.</i> TUNSTALL URBAN DISTRICT COUNCIL	335	s. 88 (1). MINTURN <i>v.</i> BARRY; MINTURN <i>v.</i> LONDON COUNTY COUNCIL	411
57 & 58 Vict. c. 16 (<i>Judicature (Procedure) Act</i> , 1894), s. 1 (1) (a). <i>In re</i> A DEBTOR (No. 20 of 1910)	30	58 & 59 Vict. c. 27 (<i>Market Gardeners' Compensation Act</i> , 1895), ss. 1, 3, 4. <i>In re</i> KEDWELL AND FLINT & CO.	10
57 & 58 Vict. c. 30 (<i>Finance Act</i> , 1894), ss. 1, 2, 3, 7 (5). ATTORNEY-GENERAL <i>v.</i> BODEN 154, 155	154, 155	58 & 59 Vict. c. 39 (<i>Summary Jurisdiction (Married Women) Act</i> , 1895). L. <i>v.</i> L.	276
ss. 2 (1) (a), 6 (2), 9 (1). PORTE <i>v.</i> WILLIAMS	152	SIRRELL <i>v.</i> SIRRELL	276, 492
ss. 2 (1), 6 (2), 8 (4), 9 (1), 22 (2) (a). <i>R. v.</i> HUDSON; SPENCER <i>v.</i> TURNER	152	STOKES <i>v.</i> STOKES	275
s. 2 (1) (c). ATTORNEY-GENERAL <i>v.</i> SECCOMBE 152, 153	152, 153	ss. 4, 5 (a). DUNNING <i>v.</i> DUNNING	275
ss. 8 (4), 14 (1). <i>In re</i> CHARLESWORTH; TEW <i>v.</i> BRIGGS	154	s. 9. <i>R. v.</i> RICHARDSON AND OTHERS, JUSTICES; <i>Ex parte</i> SHERRY	275
s. 10 (3). <i>In re</i> HARDY'S CROWN BREWERY LD. AND ST. PHILIP'S TAVERN, MANCHESTER	303	58 & 59 Vict. c. ci. (<i>Tramways Orders Confirmation (No. 2) Act</i> , 1895), ss. 46, 48. HARTLEPOOL ELECTRIC TRAMWAYS CO., LD. <i>v.</i> HARTLEPOOL CORPORATION	628, 629
s. 14 (1). <i>In re</i> HARTLAND; BANKS <i>v.</i> HARTLAND	152	59 & 60 Vict. c. 25 (<i>Friendly Societies Act</i> , 1896), ss. 8, 71. MCGLADE <i>v.</i> ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD.	235, 236
57 & 58 Vict. c. 60 (<i>Merchant Shipping Act</i> , 1894). McDERMOTT <i>v.</i> OWNERS OF STEAMSHIP "TINTORETTO"	364, 365	s. 68. RITSON <i>v.</i> DOBSON	233, 234
s. 220. DEACON <i>v.</i> EVANS	566, 567	s. 71. MCGLADE <i>v.</i> ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD.	76
s. 422. THE "PITGAVENY"	588	ss. 71 (1), 74, 106. WILKINSON <i>v.</i> CITY OF GLASGOW FRIENDLY SOCIETY	236
s. 502. VIRGINIA CAROLINA CHEMICAL CO. <i>v.</i> NORFOLK AND NORTH AMERICAN STEAM SHIPPING CO.	573	ss. 86, 87 (3). MACKIE <i>v.</i> FOX	234
s. 503. THE "FANNY"	587	59 & 60 Vict. c. 35 (<i>Judicial Trustees Act</i> , 1896). <i>In re</i> JOHNSTON; MILLS <i>v.</i> JOHNSTON	632
ss. 503, 742. THE "MUDLARK"	586, 587	<i>In re</i> MACKAY; GRIESSELMANN <i>v.</i> CARR	633, 634
s. 504. HAY <i>v.</i> JACKSON & CO.	587	s. 3 (1). <i>In re</i> GREENWOOD; GREENWOOD <i>v.</i> FIRTH	634, 635
s. 633. STEPHEN & SONS, LD. <i>v.</i> ALLAN LINE STEAMSHIP CO., LD.	593		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
59 & 60 Vict. c. 36 (<i>Locomotives on Highways Act</i> , 1896), ss. 1 (1), 6 (1). PILGRIM v. SIMMONDS	612, 613	62 & 63 Vict. c. 19 (<i>Electric Lighting (Clauses) Act</i> , 1899), ss. 12 (2), Sched. ANDREWS v. ABERTILLERY URBAN DISTRICT COUNCIL	199, 200
59 & 60 Vict. c. 56 (<i>Wild Birds Protection Act</i> , 1896), s. 1. R. v. HOPKINS; <i>Ex parte</i> LOVEJOY	14	62 & 63 Vict. c. 51 (<i>Sale of Food and Drugs Act</i> , 1899), s. 4 (1). GORDON v. LOVE	226, 227
60 & 61 Vict. c. 37 <i>Workmen's Compensation Act</i> , 1897), s. 1. NODEN v. GALLOWAYS, LD.	359	s. 6. WILLIAMS v. BAKER	231
s. 1, Sched. I. (13). VICTOR MILLS, LD. v. SHACKLETON	391	s. 20 (6). CHUTER v. FREETH AND POCOCK, LD.	229
Scheds. I. (12), II. (1). R. v. TEMPLER	395, 396	DAIRY SUPPLY CO., LD. v. HOUGHTON	229
Sched. II. (1), (4). HOWARTH v. SIR B. SAMUELSON & CO.	390	THOMAS, LD. v. HOUGHTON	225
60 & 61 Vict. c. 65 (<i>Land Transfer Act</i> , 1897), ss. 1 (1), 2 (2). <i>In re</i> JAMES; JAMES v. JONES	215	63 & 64 Vict. c. 48 (<i>Companies Act</i> , 1900), s. 1. BRITISH ASSOCIATION OF GLASS BOTTLE MANUFACTURERS, LD. v. NETTLEFOLD	81
s. 16 (2). <i>In re</i> VOSS AND SAUNDERS'S CONTRACT	432, 520	63 & 64 Vict. c. 50 (<i>Agricultural Holdings Act</i> , 1900), s. 2 (2). CATHCART v. CHALMERS	9
60 & 61 Vict. c. ccvi. (<i>Weymouth Waterworks Act</i> , 1897), s. 27. WEYMOUTH WATERWORKS CO. v. COODE AND HASELL	646, 647	63 & 64 Vict. c. 51 (<i>Money-lenders Act</i> , 1900). FAGOT v. FINE	425, 426
61 & 62 Vict. c. 29 (<i>Locomotives Act</i> , 1898), ss. 9 (1), 10. PILGRIM v. SIMMONDS	612, 613	s. 1. FORTESCUE, (L.), LD. v. BRADSHAW	428
s. 12. BILLERICAY RURAL COUNCIL v. POPLAR UNION AND KEELING	255	KING (J.), LD. v. HAY CURRIE	428
61 & 62 Vict. c. 36 (<i>Criminal Evidence Act</i> , 1898), s. 1 (e). R. v. ROWLAND	118, 119	WHEATLEY v. PART	428
s. 1 (f). BARKER v. ARNOLD	115	s. 2. <i>In re</i> ROBINSON; CLARKSON v. ROBINSON (No. 1)	426, 427
R. v. ELLIS	117, 118, 135	<i>In re</i> ROBINSON; CLARKSON v. ROBINSON (No. 2)	427
s. 1 (f) (i). R. v. CHITSON	118	WHITEMAN v. DIRECTOR OF PUBLIC PROSECUTIONS	427, 428
s. 4 (1), Sched. R. v. ANCASTER; R. v. LEACH	114	WENTWORTH LOAN AND DISCOUNT CO. v. LEFKOWITZ	427
61 & 62 Vict. c. cxxxvii. (<i>London Building Act</i> , 1894 (<i>Amendment</i>) <i>Act</i> , 1898), s. 3. LONDON COUNTY COUNCIL v. HUGHES	408, 409	WHITEMAN v. SADLER	426
REA v. LONDON COUNTY COUNCIL	408	s. 2 (1) (c). <i>In re</i> CAMPBELL; <i>Ex parte</i> SEAL	425
62 & 63 Vict. c. 14 (<i>London Government Act</i> , 1899), ss. 1, 4. PADDINGTON BOROUGH COUNCIL v. KENSINGTON ROYAL BOROUGH COUNCIL	416	ss. 2, 6. NASH v. LAYTON	177, 178
s. 4 (1). SHORT v. HAMMERSMITH CORPORATION	253, 254	s. 5. DIRECTOR OF PUBLIC PROSECUTIONS v. WITKOWSKI	428, 429
s. 29. PADDINGTON BOROUGH COUNCIL v. KENSINGTON ROYAL BOROUGH COUNCIL	418	s. 6 (a). NEWMAN v. OUGHTON; POND AND OUGHTON, CLAIMANTS	461
		63 & 64 Vict. c. cx. (<i>Great Eastern Railway (General Powers) Act</i> , 1900), s. 50. LAMBERT v. GREAT EASTERN RY. CO.	510
		63 & 64 Vict. c. cclxxxiv. (<i>Tottenham Urban District Council Act</i> , 1900), s. 64. ATTORNEY-GENERAL v. ROWLEY BROTHERS	640, 641

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
63 & 64 Vict. c. cexci. (<i>Manchester Corporation Tramways Act</i> , 1900), s. 44. R. v. MANCHESTER CORPORATION; <i>Ex parte</i> WISEMAN	627	3 Edw. 7, c. 36 (<i>Motor Car Act</i> , 1903), s. 4. <i>Ex parte</i> SYMES R. v. FLOWDEN	611 613
1 Edw. 7, c. 10 (<i>Larceny Act</i> , 1901), s. 1. R. v. MESSER	134	s. 4 (1) (2). R. v. JUSTICES OF YORKSHIRE (WEST RIDING); <i>Ex parte</i> SHACKLE- TON, <i>sub nom.</i> R. v. BEAVER AND ARMSTRONG	612
s. 1 (a). R. v. O'BRIEN	135, 136	s. 4 (4). KIDNER v. DANIELS	611
1 Edw. 7, c. 22 (<i>Factory and Workshop Act</i> , 1901), s. 10 (1). JACKSON v. A. G. MULLINER MOTOR BODY CO.	220	s. 9 (1). BETTS v. STEVENS	609
s. 13. TAYLOR v. MARK DAWSON & SON, LD.	220	s. 12 (1). PILGRIM v. SIMMONDS	612, 613
s. 24 (3) (b). CRABTREE v. COMMERCIAL MILLS SPINNING CO., LD.	219	4 Edw. 7, c. 6 (<i>Hall-marking of Foreign Plate Act</i> , 1904), s. 1. FABERGÉ v. GOLDSMITHS' CO.	527, 528
s. 128. SEAL v. BRITISH ORPHAN ASYLUM	218	4 Edw. 7, c. 23 (<i>Licensing Act</i> , 1904), s. 1 (1). MARSHALL v. SPICER	305
1 Edw. 7, c. cclv. (<i>Leeds Corporation (General Powers) Act</i> , 1901). LEEDS CORPORATION v. SUGDEN	277, 278	s. 2. <i>In re</i> BLADON; DANDO v. PORTER <i>In re</i> HARDY'S CROWN BREWERY, LD. AND ST. PHILIP'S TAVERN, MANCHESTER <i>In re</i> SPURGE; CULVER v. COLLETT ECCLESIASTICAL COMMISSIONERS FOR ENGLAND v. PAGE	304 303, 304 304 304
2 Edw. 7, c. 23 (<i>Licensing Act</i> , 1902), s. 4. TOWNSEND v. ARNOLD	306	s. 3. SMITH v. LION BREWERY CO. LD.	280, 281, 302
s. 11 (2). MARSHALL v. SPICER	305	s. 3, Sched. II. KNIGHT v. CITY OF LONDON BREWERY CO.	303
2 Edw. 7, c. 41 (<i>Metropolis Water Act</i> , 1902), ss. 2, 3, 4. METROPOLITAN WATER BOARD v. ADAIR AND NEW RIVER CO.	418	s. 23. <i>In re</i> FOX; FOX v. MOORE	303
2 Edw. 7, c. 42 (<i>Education Act</i> , 1902), s. 7. GILLOW v. DURHAM COUNTY COUNCIL	189	5 Edw. 7, c. 13 (<i>Aliens Act</i> , 1905), s. 3 (1). R. v. ZAUSMA	11
ss. 7 (3), 16. BOARD OF EDUCATION v. RICE	188, 189	5 Edw. 7, c. 15 (<i>Trade Marks Act</i> , 1905), s. 9. <i>In re</i> POPE'S ELECTRIC LAMP CO. LD.'S APPLICATION.	622
s. 7 (6). CORKE v. RAINGER, CORKE v. HIGGS	187	s. 9 (5). <i>In re</i> W. & G. DU CROS'S APPLICA- TION	622
ss. 8, 9. ATTORNEY-GENERAL (GLAMORGAN COUNTY COUNCIL) v. PRICE	52, 53	s. 11. <i>In re</i> VAN DER LEEUW'S TRADE MARK	622
s. 23 (1). SHRIMPTON v. HERTFORDSHIRE COUNTY COUNCIL	439, 440	s. 68. ROYAL WARRANT HOLDERS' ASSO- CIATION v. EDWARD DEANE AND BEAL, LD.	626
2 Edw. 7, c. cxx. (<i>Ticehurst Water Act</i> , 1902). TICEHURST AND DISTRICT WATER AND GAS CO. v. GAS AND WATER- WORKS SUPPLY AND CONSTRUCTION CO., LD.	648	5 Edw. 7, c. cxi. (<i>London Building Acts (Amendment) Act</i> , 1905), ss. 7, 22. LONDON COUNTY COUNCIL v. CLARK	410, 411
3 Edw. 7, c. 36 (<i>Motor Car Act</i> , 1903), ss. 1, 4 (1). CROMWELL v. RENTON	610	ss. 10, 12. LONDON COUNTY COUNCIL v. CANNON BREWERY CO.	410
ss. 2 (2), (4), 4 (1), 7 (1). R. v. GILL; <i>Ex parte</i> MCKIM	613		
ss. 2 (4), 4 (1) (c), (2). BROWN v. CROSSLEY	610, 611		
ss. 3, 4, 9. MARTIN v. WHITE	609, 610		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
6 Edw. 7, c. 27 (<i>Fertilisers and Feeding Stuffs Act</i> , 1906), ss. 6, 12.		6 Edw. 7, c. 58 (<i>Workmen's Compensation Act</i> , 1906), s. 1.	
HILL v. PHENIX VETERINARY SUPPLIES, LD.	10	HYNDMAN v. CRAIG & Co.	379
6 Edw. 7, c. 41 (<i>Marine Insurance Act</i> , 1906), ss. 17, 18, 19, 33, 39.		JENKINS v. STANDARD COLLIERY CO.	387, 388
THAMES AND MERSEY MARINE INSURANCE Co. v. "GUNFORD" SHIP Co.; SOUTHERN MARINE MUTUAL INSURANCE ASSOCIATION, LD. v. "GUNFORD" SHIP Co.	296	KITCHENHAM v. OWNERS OF S.S. "JOHANNESBURG"	378
6 Edw. 7, c. 43 (<i>Street Betting Act</i> , 1906), s. 1.		KITCHENHAM v. OWNERS OF S.S. "JOHANNESBURG"; LEACH v. OAKLEY, STREET & Co.	378
DUNNING v. SWETMAN	240, 241	LEE v. OWNER OF SHIP "BESSIE".	370
WALKER v. REID	242	McKEOWN v. McMURRAY	383
s. 2.		MARSHALL v. OWNERS OF S.S. "WILD ROSE"	376
STEAD v. AYKROYD	240	MURRAY v. DENHOLM & Co.	360, 361
6 Edw. 7, c. 48 (<i>Merchant Shipping Act</i> , 1906).		NISBET v. RAYNE AND BURN	357, 375
McDERMOTT v. OWNERS OF STEAMSHIP "TINTORETTO"	364, 365	PARKER v. POUT	384
s. 28.		PIERCE v. PROVIDENT CLOTHING AND SUPPLY Co., LD.	388
HALLIDAY v. TAFFS	565, 566	RILEY v. W. HOLLANDS & SONS, LD.	384
ss. 32, 34, 35, 40, 41, 42.		"SWANSEA VALE" (OWNERS) v. RICE	377
BOARD OF TRADE v. ANGLO-AMERICAN OIL Co., LD.	566	WALTERS v. STAVELEY COAL AND IRON Co.	384
ss. 34, 45.		WARNER v. COUCHMAN	386
NEWELL v. MACDEVITTE	566		
6 Edw. 7, c. 55 (<i>Public Trustee Act</i> , 1906), s. 3.		s. 1, (1).	
In re DEVEREUX; TOOVEY v. PUBLIC TRUSTEE	638	EVANS (R.) & Co. v. ASTLEY	377
ss. 3, 5.		BARNABAS v. BERSHAM COLLIERY CO.	358
In re LESLIE HASSOP ESTATES, sub nom. In re HASSOP SETTLED ESTATES; In re LESLIE'S WILL	637	BROWNE v. KIDMAN	360
ss. 6 (4), 11 (4).		COLE v. EVANS, SON, LESCHNER & WEBB, LD.	386
In the Estate of WOOLLEY	210	FLETCHER v. OWNERS OF SHIP "DUCHESS," sub nom. HEWITT v. OWNERS OF SHIP "DUCHESS"	376
ss. 10, 13.		GILMOUR v. DORMAN, LONG & Co.	383
In re ODDY	637, 638	GROVES v. BURROUGHS AND WATTS, LD.	377, 378
ss. 10, 13, 14.		HAWKINS v. POWELLS TILLERY, STEAM COAL Co., LD.	375, 376
In re ODDY; CONNELL v. ODDY	637	HONOR v. PAINTER	360
6 Edw. 7, c. 58 (<i>Workmen's Compensation Act</i> , 1906).		KANE v. MERRY AND CUNNINGHAIME, LD.	385
MACANDREW v. GILHOOLEY	369	KAREMAKER v. OWNERS OF S.S. "CORSIKAN"	387
NEWELL v. MACDEVITTE	566	KEARON v. KEARON	379
WRIGHT v. KERRIGAN	389	KELLY v. AUCHENLEA COAL Co., LD.	361, 362
s. 1.		KERR v. WILLIAM BAIRD & Co.	381
AMYS v. BARTON	387	McDAID v. STEEL	382
BALL v. W. HUNT & SONS, LD.	358, 359	M'LAREN v. CALEDONIAN RY. Co.	386
BORLAND v. WATSON GOW & Co., LD.	360	M'LAUCHLAN v. ANDERSON	389
DAVIES v. GILLESPIE	387	M'NEICE v. SINGER SEWING MACHINE Co., LD.	388
EDMONDS v. OWNERS OF S.S. "PETERSTON"	382	PHILLIPS v. WILLIAMS	385
EKE v. HART-DYKE	358	REFUGE ASSURANCE Co., LD. v. MILLAR	389
FENNAH v. MIDLAND GREAT WESTERN RY. OF IRELAND	362	REVIE v. CUMMING	383
FRY v. CHELTENHAM CORPORATION	372, 500	ROSE v. MORRISON AND MASON, LD.	380
HALVORSEN v. SALVESEN	379	THOMSON v. FLEMINGTON COAL Co., LD.	385
		TRAYNOR v. R. ADDIE & SONS	382
		WALKER v. MURRAY	360
		s. 1 (1) (c).	
		CONWAY v. PUMPHERSTON OIL Co., LD.	381

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
6 Edw. 7, c. 58 (<i>Workmen's Compensation Act</i> , 1906), s. 1 (1) (c).		6 Edw. 7, c. 58 (<i>Workmen's Compensation Act</i> , 1906), s. 13.	
HARDING v. BRYNNDU COLLIERY Co., LD.	380, 397	NEW MONCKTON COLLIERIES, LD. v. KEELING	369, 370
WEIGHILL v. SOUTH HETTON COAL Co.	380	SKALES v. BLUE ANCHOR LINE, LD.	398
s. 1 (1), (2) (c).		s. 16 (1), Sched. II. (17) (b).	
BARNES v. NUNNERY COLLIERY Co., LD.	386	MACKAY v. ROSIE	372, 373
s. 1 (2) (b), Sched. I. (1) (a).		Sched. I.	
HOWELL v. BRADFORD & Co.	363	M'GHEE v. SUMMERLEE IRON Co., LD.	396
s. (1), (2) (c).		Sched. I. (a) (ii).	
POPE v. HILL'S PLYMOUTH Co., LD.	379	TAMWORTH COLLIERY Co., LD. v. HALL	370, 371
s. 1 (4).		Sched. I. (v.).	
MCGINTY v. KYLE	363, 364	DUNNIGAN v. CAVAN AND LIND	361
ss. 1, 2.		Sched. I. (1) (b).	
STEVENS v. INSOLES, LD.	368	BURGESS & Co., LD. v. JEWELL	395
ss. 1, 5 (1).		WARD v. MILES	361
KING v. PHENIX ASSURANCE Co.	366	W. WHITE & SONS v. HARRIS	393
ss. 1, 13.		Sched. I. (2) (a).	
SMITH v. GENERAL MOTOR CAR Co., LD.	397, 398	KNOTT v. TINGLE JACOBS	365
s. 2.		Sched. I. (2) (c).	
JOHNSON v. WOOTTON	368, 369	BARCOCK AND WILCOX, LD. v. YOUNG	366
ROLES v. PASCALL & SONS	367	Sched. I. (3).	
s. 2 (1).		BEVAN v. ENERGLYN COLLIERY Co.	364
DEVONS v. ANDERSON & SONS	366, 367	PROCTOR & SONS v. ROBINSON	394
REFUGE ASSURANCE Co., LD. v. MILLAR	367	THOMAS v. FAIRBAIRNE, LAWSON & Co., LD.	395
SHANNON v. BANBRIDGE WEAVING Co.	369	Sched. I. (4).	
s. 2 (1) (a).		MORGAN v. WILLIAM DIXON, LD.	374, 375
BURRELL v. HOLLOWAY BROTHERS (LONDON), LD.	368	Sched. I. (12).	
s. 3.		CADENHEAD v. AILSA SHIPBUILDING Co., LD.	396
LEACH v. HICKSON	367, 368	Sched. I. (14).	
HORN v. LORDS COMMISSIONERS OF THE ADMIRALTY	399	HARDING v. ROYAL MAIL STEAM PACKET Co.	374
s. 6.		WARBY v. PLAISTOWE & Co.	375
CORY & SONS, LD. v. FRANCE, FENWICK & Co., LD.	372	Sched. I. (15).	
HUCKLE v. LONDON COUNTY COUNCIL	362, 363	ARNOTT v. FIFE COAL Co., LD.	374
LEES v. DUNKERLEY BROTHERS 371, 372		SAPCOTE & SONS v. HANCOX	373
s. 7 (1) (c), Sched. I. (3).		Sched. I. (16).	
MCDERMOTT v. OWNERS OF S.S. "TINTORETTO"	364, 365	CARDIFF CORPORATION v. HALL	394
s. 8 (1) (f).		CARLIN v. ALEXANDER STEPHEN & SONS, LD.	396, 397
GARRETT v. WADDELL & SON	399	CORY BROTHERS & Co., LD. v. HUGHES	394, 395
WINTER v. ADDIE & SONS' COLLIERIES, LD.	399, 400	Sched. I. (17).	
s. 9, Sched. I. (2).		CALICO PRINTERS ASSOCIATION, LD. v. HIGHAM	391
OWNERS OF SS. "RAPHAEL" v. BRANDY	365	Sched. I. (19).	
s. 11, Sched. II. (4).		HOSEGOOD & SONS v. WILSON	393
PANAGOTIS v. OWNERS OF SHIP "PONTIAC"	390	Sched. II. (4).	
s. 13.		SMITH v. GENERAL MOTOR CAR Co., LD.	389, 390
BRIGGS v. MITCHELL	371	Sched. II. (9).	
M'DOUGALL v. M'DOUGALL	398	M'GOWN v. WORKMAN, CLARK & Co., LD.	393
MACGILLIVRAY v. NORTHERN COUNTIES INSTITUTE FOR THE BLIND	398, 399	PHILLIPS v. VICKERS, SONS AND MAXIM	392

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
6 Edw. 7, c. 58 (<i>Workmen's Compensation Act</i> , 1906). Sched. II. (9). SHORE v. S.S. "HYRCANIA" (OWNERS; LUNT v. SUTTON HEATH AND LEA GREEN COLLIERIES, LD.	392	7 Edw. 7, c. 24 (<i>Limited Partnerships Act</i> , 1907). In re HUGHES & Co.	454
Sched. II. (9) (a). SHIP "SEGURA" (OWNERS) v. BLAMPIED	391	7 Edw. 7, c. 29 (<i>Patent and Designs Act</i> , 1907), s. 18. In re LODGE'S PATENT	457
Sched. II. (9) (d). BEECH v. BRADFORD CORPORATION	392	ss. 20, 26, 27. In re BELDAM'S PATENT; TURNER v. BELDAM	458
Sched. II. (15). CAROLAN v. HARRINGTON	373, 374	ss. 21, 22, 23. STEPNEY SPARE MOTOR WHEEL CO., LD. v. HALL	458, 459
HENRICKSEN v. S.S. "SWANHILDA" (OWNERS)	373	s. 27. In re APPLICATION OF FIAT MOTORS, LD.	460
JACKSON v. SCOTSTOUN ESTATE CO.	374	s. 27 (1). In re GREEN'S APPLICATION	460, 461
7 Edw. 7, c. 9 (<i>Territorial and Reserve Forces Act</i> , 1907), ss. 1—4. WIXON v. THOMAS; LAMBERT v. THOMAS; BURROWS v. THOMAS	535	ss. 49, 53. SMITH BROTHERS (WHITEHAVEN) v. REDFEARN	103
7 Edw. 7, c. 12 (<i>Matrimonial Causes Act</i> , 1907). MARIGOLD (OTHERWISE EVANS) v. MARIGOLD	269	s. 60 (1). GRAMOPHONE CO., LD. v. MAGAZINE HOLDER CO.	456
7 Edw. 7, c. 13 (<i>Finance Act</i> , 1907), s. 25 (1). LANSTON MONOTYPE CORPORATION, LD. v. ANDERSON	281, 282	7 Edw. 7, c. 39 (<i>Factory and Workshop Act</i> , 1907), s. 1. SADLER v. ROBERTS	218, 219
7 Edw. 7, c. 17 (<i>Probation of Offenders Act</i> , 1907), s. 1 (1). DUNNING v. TRAINER	346	SEAL v. BRITISH ORPHAN ASYLUM	218
ss. 1, 6. R. v. SPATLING	120, 121	7 Edw. 7, c. 47 (<i>Deceased Wife's Sister's Marriage Act</i> , 1907). In re GREEN; GREEN v. MEINALL	174
s. 6 (5). M'INTYRE v. HENDERSON	122	ss. 1, 2. In re GREEN; GREEN v. MEINALL	265
7 Edw. 7, c. 21 (<i>Butter and Margarine Act</i> , 1907), s. 8. WILLIAMS v. BAKER	231	In re WHITFIELD; HILL v. MATHIE	264
7 Edw. 7, c. 23 (<i>Criminal Appeal Act</i> , 1907), s. 1 (6). R. v. BALL, <i>sub nom.</i> DIRECTOR OF PUBLIC PROSECUTIONS v. BALL (No. 2)	115, 143	7 Edw. 7, c. 53 (<i>Public Health Acts Amendment Act</i> , 1907), s. 30. CARSHALTON URBAN DISTRICT COUNCIL v. BURRAGE	252
ss. 1 (6), 4. R. v. BALL, <i>sub nom.</i> DIRECTOR OF PUBLIC PROSECUTIONS v. BALL (No. 1)	142	s. 94. FEARON v. WARRENPOINT URBAN DISTRICT COUNCIL	332, 333
s. 3. R. v. IRELAND	142	7 Edw. 7, c. 55 (<i>London Cab and Stage Carriage Act</i> , 1907). R. v. COMMISSIONER OF METROPOLITAN POLICE; <i>Ex parte</i> PEARCE	413, 414
R. v. LARKINS	141	7 Edw. 7, c. clxxi. (<i>Metropolitan Water Board (Charges) Act</i> , 1907), ss. 7, 8, 19. STACEY v. GAS LIGHT AND COKE CO. AND METROPOLITAN WATER BOARD	418
R. v. MACHARDY	141, 142	s. 8. BATT v. METROPOLITAN WATER BOARD	441
ss. 3, 4 (3), 19 (a). R. v. SMITH; R. v. WILSON	140, 141	ss. 8, 19. BATT v. METROPOLITAN WATER BOARD	417, 418
s. 4. R. v. KEATING	127, 128	ss. 9, 25. COLLEY'S PATENTS, LD. v. METROPOLITAN WATER BOARD	416
s. 4 (1). R. v. ROWLAND	126		
s. 4 (3). R. v. DAVIDSON	140		
R. v. ETTRIDGE	140		
R. v. SIMPSON	139		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

COL.		COL.	
7 Edw. 7, c. clxxi. (<i>Metropolitan Water Board (Charges) Act, 1907</i>), s. 13.		8 Edw. 7, c. 59 (<i>Prevention of Crime Act, 1908</i>), s. 10.	
METROPOLITAN WATER BOARD v. PHILLIPS	417	R. v. TURNER	123
		R. v. WALLER	124
8 Edw. 7, c. 15 (<i>Costs in Criminal Cases Act, 1908</i>), ss. 1 (1), 6 (3).		ss. 10 (1), 19 (2).	
R. v. ALLEN; <i>Ex parte</i> HARDY 352, 353		R. v. SMITH; R. v. WESTON	127
s. 1 (2).		s. 10 (2).	
R. v. STUDDS	122	STIRLING v. H. M. ADVOCATE 126, 127	
8 Edw. 7, c. 28 (<i>Agricultural Holdings Act, 1908</i>), s. 2.		s. 10 (4).	
<i>In re</i> LORD DERBY'S CONTRACT;		R. v. TURNER	123, 124
FERGUSON v. DERBY	9, 541	s. 10 (4) (b).	
s. 42 (2).		R. v. MORAN	125
<i>In re</i> KEDWELL AND FLINT & CO.	10	s. 11.	
8 Edw. 7, c. 32 (<i>Friendly Societies Act, 1908</i>), s. 9.		R. v. SMITH; R. v. WESTON	127
MACKIE v. FOX	234, 235	8 Edw. 7, c. 64 (<i>Agricultural Holdings (Scotland) Act, 1908</i>), s. 1, Sched. I, Pt. 3.	
8 Edw. 7, c. 36 (<i>Small Holdings and Allotments Act, 1908</i>), ss. 7, 39, Sched. I.		M'QUATER v. FERGUSON	9
EARL OF CARLISLE (EXECUTRIX OF) v. NORTHUMBERLAND COUNTY COUNCIL	89, 90	s. 11 (1).	
8 Edw. 7, c. 40 (<i>Old Age Pensions Act, 1908</i>).		STEWART v. WILLIAMSON	546
R. (CAIRNS) v. LOCAL GOVERNMENT BOARD (IRELAND) AND COUNTY TYRONE LOCAL PENSION COMMITTEE	341	8 Edw. 7, c. 65 (<i>Summary Jurisdiction (Scotland) Act, 1908</i>).	
ss. 1, 2, 7, 9.		s. 48.	
MURPHY v. R.	340, 341	M'RORY v. FINDLAY	351
8 Edw. 7, c. 45 (<i>Punishment of Incest Act, 1908</i>), ss. 1, 2.		s. 75.	
R. v. BALL <i>sub nom.</i> DIRECTOR OF PUBLIC PROSECUTIONS v. BALL	115	CROMWELL v. RENTON	610
R. v. DIMES	130	8 Edw. 7, c. 66 (<i>Public Meeting Act, 1908</i>), s. 1.	
8 Edw. 7, c. 53 (<i>Law of Distress Amendment Act, 1908</i>), s. 1.		BURDEN v. RIGLER	256
ROGERS EUNGLUT & CO. v. MARTIN	180	8 Edw. 7, c. 67 (<i>Children Act, 1908</i>), s. 7.	
ss. 1, 4.		GLASGOW PARISH COUNCIL v. MARTIN	285, 292
CHAPPELL & CO. v. HARRISON	179	s. 98.	
ss. 1, 4 (1).		WHITE v. JEANS	285
ROGERS EUNGLUT & CO. v. MARTIN	179	ss. 102 (3), 106.	
8 Edw. 7, c. 55 (<i>Poisons and Pharmacy Act, 1908</i>), s. 2.		R. v. BRADFORD	139
PHARMACEUTICAL SOCIETY v. JACKS	405, 406	s. 120.	
PHARMACEUTICAL SOCIETY v. NASH	405	DONAGHUE v. MCINTYRE	308, 309
8 Edw. 7, c. 59 (<i>Prevention of Crime Act, 1908</i>), s. 7.		RUSSON v. DUTTON (No. 1), <i>sub nom.</i> RUSSON v. DUTTON (No. 2)	308
R. v. KEATING	127, 128	s. 128 (3), Sched. II.	
s. 10.		R. v. DICKINSON; <i>Ex parte</i> DAVIS	351, 352
R. v. CULLIFORD	125	8 Edw. 7, c. 68 (<i>Port of London Act, 1908</i>), s. 3 (1).	
R. v. EVERITT	125, 126	PORT OF LONDON AUTHORITY v. MIDLAND RY. CO., GREAT EASTERN RY. CO. AND TOTTENHAM AND HAMPSTEAD JOINT COMMITTEE 511, 512	
R. v. HEARD	126	8 Edw. 7, c. 69 (<i>Companies (Consolidation) Act, 1908</i>), s. 9 (i).	
R. v. JONES (No. 1)	125	<i>In re</i> ANGLO-AMERICAN TELEGRAPH CO.	76
R. v. ROWLAND	126	<i>In re</i> NEW WESTMINSTER BREWERY CO.	76
R. v. SMITH; R. v. WESTON	126	s. 17.	
		MUGLADE v. ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD.	76
		ss. 26, 64.	
		PARK v. LAWTON	74

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

	COL.		COL.
8 Edw. 7, c. 59 (<i>Companies (Consolidation) Act</i> , 1908), s. 40.		9 Edw. 7, c. 10 (<i>Superannuation Act</i> , 1909), s. 1.	
NEALE <i>v.</i> CITY OF BIRMINGHAM TRAMWAYS Co.	80, 81	<i>In re</i> LUPTON; <i>Ex parte</i> OFFICIAL RECEIVER	34, 35
s. 45.		9 Edw. 7, c. 30 (<i>Cinematograph Act</i> , 1909), ss. 1, 2.	
<i>In re</i> ASHANTI DEVELOPMENT, LD.	62	LONDON COUNTY COUNCIL <i>v.</i> BERMONDSEY BIOSCOPE Co.	616
s. 46.		9 Edw. 7, c. 44 (<i>Housing, Town Planning, &c.</i> , <i>Act</i> , 1909), ss. 17, 39, 41.	
<i>In re</i> DE LA RUE (THOMAS) & Co., LD.	79	RAYNER <i>v.</i> STEPNEY CORPORATION	340
s. 48.		9 Edw. 7, c. 49 (<i>Assurance Companies Act</i> , 1909), s. 13.	
<i>In re</i> CLARK (JOHN T.) & Co., LD.	80	EMPIRE GUARANTEE AND INSURANCE CORPORATION, LD., PETITIONERS	294
<i>In re</i> LINDNER & Co.	80	s. 16.	
s. 49 (3).		<i>In re</i> LANCASHIRE PLATE GLASS, FIRE AND BURGLARY INSURANCE Co., LD.	293, 394
PALACE BILLIARD ROOMS, LD. AND REDUCED, PETITIONERS	80	10 Edw. 7 & 1 Geo. 5, c. 8 (<i>Finance (1909-10) Act</i> , 1910).	
s. 69 (1), (3).		DEARDS <i>v.</i> ASSESSOR FOR EDINBURGH; CLARK <i>v.</i> SAME	516, 517
<i>In re</i> CLARK (JOHN T.) & Co.	74	DYSON <i>v.</i> ATTORNEY-GENERAL	144
s. 69 (2) (a).		JOSEPH JONES & Co. <i>v.</i> WEST DERBY UNION	516, 517
<i>In re</i> PENARTH PONTOON SLIPWAY AND SHIP-REPAIRING Co., LD.	74, 75	NORTH BRITISH DISTILLERY Co., LD. <i>v.</i> ASSESSOR FOR EDINBURGH	516, 517
ss. 81, 285.		R. <i>v.</i> SHOREDITCH ASSESSMENT COMMITTEE, <i>Ex parte</i> MORGAN	513
<i>In re</i> SOUTH OF ENGLAND NATURAL GAS AND PETROLEUM Co., LD.	77, 78	ss. 26, 31.	
s. 89.		BURGHES <i>v.</i> ATTORNEY-GENERAL	144
DOMINION OF CANADA GENERAL TRADING AND INVESTMENT SYNDICATE <i>v.</i> BRIGSTOCKE	83	s. 44 (1).	
ss. 93, 212.		WRIGGLESWORTH <i>v.</i> R.	529
<i>In re</i> ORLEANS MOTOR Co., LD.	67, 68	ss. 50, 52.	
s. 93 (1) (e).		FAIRHURST <i>v.</i> PRICE	529, 530
<i>In re</i> LAW, CAR AND GENERAL INSURANCE CORPORATION	67	s. 59.	
ss. 113, 281.		<i>In re</i> WEIR AND PITT'S CONTRACT	153, 154
YOUNG <i>v.</i> BROWNLEE & Co.	72	s. 74 (1), (5).	
s. 120.		<i>In re</i> WEIR AND PITT'S CONTRACT	530
<i>In re</i> SHANDON HYDROPATHIC Co., LD.	65	s. 86 (1), (2), Sched. 5 (2).	
<i>In re</i> UNITED PROVIDENT ASSURANCE Co.	75	LONDON COUNTY COUNCIL <i>v.</i> TURNER	527
s. 131.		Form IV.	
<i>In re</i> SOUTHSEA GARAGE, LD.	86	DYSON <i>v.</i> ATTORNEY-GENERAL	484
s. 140.		10 Edw. 7 & 1 Geo. 5, c. 24 (<i>Licensing (Consolidation) Act</i> , 1910), s. 21.	
ARMORDUCT MANUFACTURING Co., LD. <i>v.</i> GENERAL INCANDESCENT Co., LD.	205, 206	<i>In re</i> FOX; FOX <i>v.</i> MOORE	303
ss. 195, 223.		s. 21 (3) Sched.	
<i>In re</i> HENDERSON'S NIGEL Co., LD.	88	KNIGHT <i>v.</i> CITY OF LONDON BREWERY Co.	303
s. 212.		ss. 22, 24, Sched. II., Pt. 2.	
HODSON <i>v.</i> BLANCHARD (LONDON)	68	R. <i>v.</i> COOKE; <i>Ex parte</i> ATHERTON	306
s. 215.		s. 65 (3).	
<i>In re</i> BRAZILIAN RUBBER PLANTATIONS AND ESTATES, LD.	71	R. <i>v.</i> SOUTH SHIELDS LICENSING JUSTICES; <i>Ex parte</i> MORRISON	302
s. 268 (1), cl. vii.		s. 79.	
<i>In re</i> HUGHES & Co.	454	TAYLOR <i>v.</i> WILSON	241
s. 274.			
LORD ADVOCATE <i>v.</i> HURON AND ERIE LOAN AND SAVINGS Co. AND OTHERS	83, 84		
s. 278			
PLASYCOED COLLIERIES Co. <i>v.</i> PARTRIDGE, JONES & Co., LD.	108		

CHRONOLOGICAL LIST OF STATUTES REFERRED TO.

COL.		CANADA.	
10 Edw. 7 & 1 Geo. 5, c. cxxix. (<i>London County Council (General Powers) Act, 1910</i>), s. 22.		<i>Dominion.</i>	
R. v. LONDON COUNTY COUNCIL ; <i>Ex parte</i> THORNTON	146	(<i>Civil Code of Lower Canada</i>), s. 2522.	COL.
B. COLONIAL STATUTES.		MONTREAL LIGHT, HEAT AND POWER Co. v. SEDGWICK AND OTHERS	299
AFRICA.		(<i>Canadian Trade Mark and Design Act, 1879</i>).	
NATAL.		STANDARD IDEAL Co. v. STANDARD SANITARY MANUFACTURING Co.	166, 622, 623
<i>Natal Law</i> 19 of 1884, ss. 2, 3.		(<i>Canadian Railway Act, 1903</i>), ss. 42, 242.	
MUNRO v. DIDCOT	163	CANADIAN NORTHERN RY. Co. v. ROBINSON	164
AUSTRALIA.		R. S. C. 1906, c. 29 (<i>Bank Act, 1906</i>).	
NEW SOUTH WALES.		McFARLAND v. BANK OF MONTREAL AND ROYAL TRUST Co.	166
(<i>New South Wales Moore Street Im- provement Act, 1890</i>), ss. 4, 6.		ONTARIO.	
SYDNEY MUNICIPAL COUNCIL v. HEAY	159	62 Vict. c. 58 (<i>Montreal City Charter</i>), s. 14, art. 338.	
(<i>New South Wales Stamp Duties Act, 1898</i>), ss. 49, 52.		LAPORTE v. LARIN	169
COMMISSIONERS OF STAMP DUTIES v. BYRNES	160	QUEBEC.	
(<i>New South Wales Superannuation Act, 1903</i>), s. 4.		4 Edw. 7 c. 34 (<i>Quebec Act</i>).	
WILLIAMS v. GIDDY	159, 160	STANDARD IDEAL Co. v. STANDARD SANITARY MANUFACTURING Co.	168
<i>New South Wales Stamp Duties (Amendment) Act, 1904</i> , s. 14 (5).		INDIA.	
COMMISSIONER FOR STAMP DUTIES v. BROKEN HILL SOUTH EXTENDED	160, 161	<i>Ceylon Ordinance</i> 22, of 1871.	
NEW ZEALAND.		ABDUL AZEEZ v. MOHAMED ISMAIL ABDUL RAHMAN MUDLIYAR	170
No. 60 of 1903 (<i>New Zealand Family Protec- tion Act, Part II</i> , 1903), s. 33 (1).		Act No. xxiii. of 1871 (<i>Pensions Act, 1871</i>) ss. 4, 11, 12.	
ALLARDICE v. ALLARDICE	171, 172	KNILL v. DUMERGUE	172, 173
8 Edw. 7 (<i>New Zealand Statutes, No. 12 of 1908</i>), ss. 53, 61.		<i>Ceylon Ordinance</i> 15 of 1876, s. 26.	
<i>In re</i> ANDERSON	24	SAMARADIWAKARA v. DE SARAM	170
WESTERN AUSTRALIA.			
2 Edw. 7, No. 32 (<i>Western Australia Dividend Duties Act, 1902</i>), ss. 5, 6, 13, 15.			
GOLDEN HORSESHOE ESTATES Co. v. R.	161		

311175

Author

Law, DiE

B9886

Title Butterworths' ten years' digest; yearly digest of reported cases for the year 1911; ed. by Hill and Clover

DATE

NAME OF BORROWER

University of Toronto Library

DO NOT
REMOVE
THE
CARD
FROM
THIS
POCKET

Acme Library Card Pocket
LOWE-MARTIN CO. LIMITED

45/-